IX–11

RESEARCHES INTO THE HISTORY

OF THE

Roman Constitution.

RESEARCHES
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Roman Constitution

WITH AN APPENDIX

UPON THE ROMAN KNIGHTS

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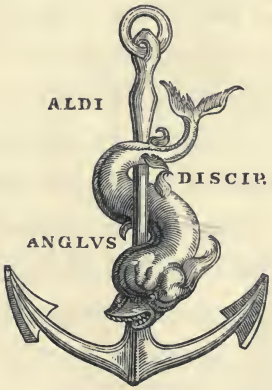

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PREFACE.

THE substance of the following pages was published, 1847, in Germany, under the title "Forschungen auf dem Gebiete der Roemischen Verfassungsgeschichte." As this work has been fortunate enough to attract the attention of historical critics in Germany, I was very glad to hear from my friend, Mr. Francis Haywood of this town, that he had translated it into English: and I undertook with great pleasure the task of looking over the translation and making such alterations and additions as subsequent study had suggested.

It will be found, I trust, that the Work, though chiefly directed against some of the fundamental principles of Niebuhr, is not

written with a view of detracting in the least from the merits of that great historian. His theories have been subjected to a far more searching and less scrupulous criticism in Germany than in England. A great number of pains-taking, learned, and judicious writers, such as Wachsmuth, Goettling, Rubino, Peter, Puchta, Becker, Marquardt, the Dane Madvig, and others, although in general adopting the views of Niebuhr, have ventured in many particulars to differ from him; and they have succeeded in several instances in pointing out fallacies, and in establishing more correct opinions. We are perhaps on the eve of the reconstruction of the History of Rome from the mass of materials, in part old and approved, in part entirely recast, or newly discovered since Niebuhr, and I am sanguine enough to hope that perhaps in the following pages some ideas may be found, which a man endowed with learning, genius, political experience and leisure may usefully employ in erecting such a noble *monumentum aere perennius* on the domain of the History of Rome as Mr. Grote has done on that of Hellas.

I am conscious, however, of a defect in the present Work. It is this,—that an undue anxiety to compress the subject into a small compass, the idea μέγα βίβλιον μέγα κακόν, has induced me to forego the advantage of greater clearness. I fear that those readers whose studies have not made them quite familiar with the subjects treated of in the present volume will sometimes complain that I have too slightly hinted at facts and reasonings, instead of leisurely expounding the whole case, and thus enabling them to form their conclusions, without opening all the books referred to in the notes.

This mistake I shall endeavour to avoid in a more comprehensive work on the Constitutional History of Rome, with which I am at present engaged, and which I hope to bring out very soon, if my professional duties leave me sufficient leisure in the ensuing year.

To my friend Mr. Haywood I take this opportunity of expressing my most heartfelt thanks for the trouble he has undertaken as a translator.

My best acknowledgments are due also to Mr. T. F. Ellis, late Fellow of Trinity

College, Cambridge, for the kindness with which he undertook to look over the proof sheets, and for several very valuable suggestions.

W. I.

Liverpool, 12th January, 1853.

CONTENTS.

RESEARCHES INTO THE HISTORY OF THE ROMAN CONSTITUTION.

Niebuhr's Theory of the original Roman State.

NIEBUHR has propounded the following doctrine regarding the ancient Roman Constitution. The Roman State consisted originally of *Patricians* and *Clients* only; there was no *Plebs*. The clients were chiefly artizans and shopkeepers. To those clients who did not gain their living by trade the patricians leased out small portions of land,[1] to be held by tenure at pleasure. The lands of which the patricians disposed in this manner were national domains (Ager publicus),[2] belonging to the state (Populus) as *Property*, and of which the patricians

[1] Niebuhr, Römische Geschichte, vol. i. page of note 824. In quoting Niebuhr's Roman History I have not given the numbers of the pages, because these vary in different editions. I have preferred giving the number of a note, so that Niebuhr, vol. i. page of note 824 means that page in the first volume to which note 824 belongs.

[2] Niebuhr, Römische Geschichte, vol. i. page of note 981.

only had *Possession* (possidebant). In such possessions the principal wealth of the patricians consisted. They had indeed also some land as *property;* but this was quite insignificant in extent, each member of the populus possessing only two jugera which, without the enjoyment of the state land, would not have been sufficient to maintain a family.[1]

The Roman State remained thus constituted until the time of Ancus, which king admitted *the Plebs*, with entirely new rights and duties, out of the conquered Latin towns, as a fresh constituent part of the community quite distinct from the patricians as well as clients.[2] The plebeians were excluded from the common land, but obtained in compensation complete landed property.[3] Nor was this meted out to them as scantily as to the patricians, but in quantities of about seven jugera to a family. This full property was free from tenths; but it was entered in the census lists; and when a tribute was levied to cover war expenses or other extraordinary outlays it was then rated, whilst the patrician possession of the common land was not entered in the census lists, and the patricians in possession had only to pay on account of it an annual tenth to the State.

This is the condition of tenure in the old

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[1] Niebuhr, Röm. Gesch. vol. ii. page of note 328.
[2] Niebuhr, Röm. Gesch, vol. i. page of note 963 and 966.
[3] Ibid. 981.

Roman territory (ager Romanus). In new conquests it was contested whether the plebeians should or should not have a share in the division of land. The plebeians were excluded, for instance, in the colony at Antium.[1] In this case, therefore, and in several others the patricians alone formed the colony. The mode of proceeding was as follows:—A certain part of the land, usually two-thirds, was left to the previous inhabitants, of course not free from charge, but under certain conditions which are not known more particularly. The remaining third ought properly to have been divided equally among the thirty Roman curiæ, and in each curia among the individual members. But thus the evil would have arisen that a curia reduced in numbers, and which therefore had been of less service in war, nevertheless would have obtained equal advantage with other complete curies; so that each individual in such weaker curies would have received so much the greater share, as the number of those entitled to share with him was smaller. To this was added another difficulty, namely, that poorer patricians did not possess the means of making use advantageously of a small portion of land at a distance. Therefore the "*surprising mode* of appropriating land by *occupation*" was introduced;[2] that is, each Roman citizen could take possession of a certain portion of the

[1] B. C. 467. Niebuhr, vol. ii. note 559.

[2] Niebuhr, vol. ii. page of note 347.

conquered territory which was declared to be state-land, and was left undivided, and he might therewith act as he chose, only with this reservation that the State remained the owner, and obtained a tenth of the produce of the occupied land. Such occupation could not but take place according to well defined rules, which, however, are wholly unknown; and it would only be exercised by the more opulent, whilst the poorer (of the patricians) obtained as indemnity a distribution of money from the coffers of the State into which the tenth was paid.

In this manner of taking possession of the conquered land nothing was changed when the patricians were compelled from circumstances to let the plebeians also take part in a colony.[1] The plebeians then obtained a definite assignment of land as absolute property; but they had no right, like the patricians, to take possession of the state land, nor, on the other hand, was land given in absolute property to the patricians. The agrarian agitations among the plebeians turn constantly on this point; that the plebeians attempt to eject the patricians from the possession of the national domain, and to portion it out as absolute property among themselves.

Improbabilities of this theory.

If we consider Niebuhr's theory in general without entering into detail and without asking for evidence, and if we seek to realise his idea of

[1] This happened for the first time in the case of the colony at Lavici.—Niebuhr, vol. ii. page of note 955.

ancient Rome, we cannot help at once noticing some serious improbabilities in his system. Our faith in Niebuhr's authority must be strong indeed to silence the many doubts which arise in our minds.

Rome was never a manufacturing or trading community, least of all in the most ancient period. We must therefore consider the clients, the lower part of the original population, as principally agricultural, if we wish to assign to them any occupation whatever, and to understand how the patricians turned to advantage their own extensive possessions.[1] We must further assume that a considerable portion of the Roman military force consisted of clients.[2]

Now this view of the question is irreconcileable with the assertion of Niebuhr according to which "Freedmen and their descendants made up the greatest number of the clients,"[3] who were chiefly artizans and traders, and who "untrained to arms, were no match for the peasants exercised in war (that is the plebeians)."[4] This view obtains throughout Niebuhr's work. The plebeians are

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[1] This is also Becker's view.—Handbuch der Röm. Alterthümer, vol. ii. part. i. page 125.

[2] Becker (Handbuch der Röm. Alterth. vol. ii. part i. page 129) is of this opinion and quotes Dionysius, vii. 19; x. 43; vi. 47; ix. 15; in confirmation of it. Göttling admits the same, Röm. Staatsverfass. § 64. Puchta (Institut. § 42) goes so far as to maintain that all the foot soldiers consisted of clients.

[3] Niebuhr, Röm. Gesch. vol. i. page of note 1321.

[4] Niebuhr, Röm. Gesch. vol. ii. page of note 487.

always represented by him as country people, and the clients as those who, as trading townspeople and artizans, were permanently dependent on the Gentes; so that before the origin of the plebs there was properly speaking no free and independent peasantry. It is true Niebuhr indicates, *en passant*, the true state of matters by supposing that the patroni granted land to their followers, not as property but in tenancy at will, which they could resume as soon as they found themselves injured;[1] but he is not thereby diverted from his fundamental proposition, which he rather endeavours to strengthen by means of an hypothesis concerning the origin of the clients.[2] With him, namely, clients are for the most part strangers and freedmen, who have placed themselves under the protection of powerful old Burghers.[3] He does not take into consideration that such a class could only arise very gradually, that therefore it must be assumed that there was a period in which the patricians alone constituted the Roman State.

We shall therefore judge more correctly if we take the clients for subjugated original inhabitants, a view which easily forces itself upon us, and in fact appears quite indisputable.[4] Similar social differences have arisen by conquest in Laconia, Thessaly, Argolis, Epidaurus, Si-

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[1] Niebuhr, Röm. Gesch. vol. i. page of note 824. [2] Ibid.
[3] Göttling Röm. Staatsverfassung, § 64 has the same view.
[4] Becker Handbuch der Röm. Alterth. vol. ii. part i. page 125.

cyon,[1] and other Greek states; and that this general rule applies also to the Romans is sufficiently shown in the historical period of their conquests, when the conquered were in no instance placed on a level with the old burghers as it would now happen in Europe, but obtained inferior rights. Becker adopts this solution of the difficulty respecting the origin of the clients; but he is thus entangled in a new one; for, being unable to explain the inviolate sacredness of the obligations subsisting between patron and client, he is inclined, like Göttling, to deduce an important if not the chief part of the clients from the establishment of an asylum, by which he supposes fugitives to have obtained a sort of religious inviolability. In this way the correct view is lost of the origin of clients, namely, that resting on the hypothesis of a conquest; or at least it is thrown into the background without any advantage being gained. For, in the first place, the tradition concerning this asylum is a pure fiction; and, secondly, the pretended sanctity of the client is not so firmly established as some with childish credulity have admitted upon the authority of Dionysius.

We shall afterwards return to this question, and will here only remark that the religious horror of violating the clients, of which Dionysius speaks, belongs to Utopia but not to Rome, where we know the patricians too well to believe them

[1] Müller Dorians, Book iii. chap. 4, especially § 7.

capable of such moderation and equity.[1] There is, therefore, absolutely no ground existing to reject the only admissible idea of the origin of a subordinate population, namely, that resting on the supposition of the conquest of the original inhabitants, which we find confirmed by the general principles and practices of all conquerors.

But, we continue to ask, how does it happen that such different principles prevailed at the conquest of the neighbouring Latin communities under Ancus Martius? What induced the Romans to deviate from their hitherto adopted and as it appears approved principles, to receive the conquered into the state on new terms, and to make their condition better than that of the old and faithful clients? Whence this desire of novelty which unnecessarily seems to delight in new experiments? The clientage was not, as might be supposed, an institution belonging exclusively to Rome, called into life by the whim of a king, or the co-operation of peculiar causes. It existed amongst all Italian people, Sabines,[2] Samnites,[3] Etruscans.[4] How is it then that in the conquests of Ancus we hear nothing of the clientage?[5] Were there peculiar circumstances

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[1] Compare for instance the murder of the tribune Cn. Genucius (Liv. ii. 54), of which the patricians publicly boast.

[2] Liv. ii. 16.

[3] Nonius Marcellinus, ii. 1.

[4] Liv. v. 1.

[5] Puchta (Institutionen, § 43.) proposes a solution of the difficulty, which I confess I do not understand.

which made the old and original mode of acting inapplicable? The traditions of the time do not allow us to conjecture anything of this sort. On the contrary, the conquered appear to have been entirely at the mercy of the conqueror and to have been entitled to no particular claims and preferences. A sudden revolution therefore, such as according to Niebuhr is to be ascribed to Ancus, is in itself improbable, and has moreover no foundation in the sources we possess.

Not less strange is another mode of proceeding which Niebuhr attributes to the Romans, namely, that of the occupation of the Ager publicus in new conquests. Niebuhr[1] has not suppressed his astonishment at this measure, and he ought not to have been content with an unsatisfactory explanation. Who can say that assignments of land, if any were made, must necessarily have been made according to curies, and, that each individual member was entitled to an equal share? And even if this were the case, yet in the most ancient time the curies were not reduced in numbers, so that in an equal division according to curies an unfair inequality must have arisen. It was the practice even down to the latest time to look upon land as a reward for service in war. On this account the numbers of the colonists are always in proportion to the strength of the legion. Why, should it have been otherwise in the oldest time? The curies were either equally

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[1] Röm. Gesch. vol. ii. page of note 347.

or unequally represented in every army. In the former case they had an equal right to the assignment of land; and in the second the conquered land and booty ought to have been divided, not according to curies, but in equal shares to each individual soldier. As to the booty, we learn from many examples that it was the custom to give it up to the citizens that happened to serve in the army, in case it was not brought into the Ærarium and dedicated to general state purposes. It is adduced as a remarkable exception that in the conquest of Veii the whole people was invited into the camp in order to share the spoil. Hence it is sufficiently evident that generally neither a public distribution of the spoil was usual, nor a participation of the whole people in it.

Niebuhr's farther theory is that only the richer amongst the patricians found their advantage in the acquisition of the conquered lands. Why, however, should not a poor patrician have desired a small apportionment of land as eagerly as a plebeian? When he could not himself cultivate a distant piece of ground, what prevented him from leasing or selling it? Niebuhr indemnifies him by a donation from the common treasury; but this, at the best, is nothing but a conjecture, and not a particularly happy one, probably taken from the Lex Boria of the time of the Gracchi. The occupation of land remains still unexplained, and especially the circumstance that the patricians alone were entitled to it.

It is natural to suppose that the fundamental

regulations concerning the old Ager Romanus would be transferred to the conquered lands. But now, as Niebuhr admits, that in the Ager Romanus the patricians had property in land, why was this principle not extended to the colonies?[1] Was the power or the will wanting in the patricians? Either hypothesis seems sufficiently refuted by history. Whilst the Roman people, the populus, still consisted of the patricians alone, it could not be difficult to establish a law which would allot to the patricians property in the conquered land: and we see that the patricians knew how to value such property; for they show continually the desire to increase their landed property, and in any way to appropriate and unite with it as much as possible from the common land.

Still more incomprehensible than the modesty of the patricians in the division of the conquered lands is the impudence of the plebeians in their incessant demands and in their insatiable avarice. Not satisfied with their proportionably large properties of seven jugera to each family, they always complained that the patricians possessed the state land unjustly, and then they wished to drive them from it, and to have it allotted as property to themselves. These occurrences are positive enigmas. We can neither attribute to the plebs, the modest, the easily contented plebs, so un-

[1] Puchta (Institut. § 43) is, at all events, consistent in denying that the patricians had landed property in the Ager Romanus.

bounded a shamelessness, nor can we understand the conduct of the patricians who in this case neither appeal to right nor equity, nor yet in the new conquests secure to themselves, through allotment of property, a part of the conquered land.

In these never ceasing contests between the two parties we always find the clients on the side of the patricians as faithful allies, and who by this faithfulness seem to find their own advantage. Through their help alone the gentes were enabled to make an obstinate resistance, and to lose their prerogative so slowly, and often indeed only in appearance. We should conjecture therefore that the patricians were anxious to preserve the connexion with the clients, or rather to strengthen and extend it, and that they found a sufficient number ready for it; but on the contrary we find that the clientage gradually disappears, without the plebeians seeking to accelerate its dissolution, nor the patricians to resist it. Thus vanishes this institution as mysteriously as it arose, a real problem which seems only to have existed in order to confuse and deceive our senses by all sorts of cloudy mystifications.

Arguments in favour of Niebuhr's theory.

One has a right to expect that Niebuhr's theory of the origin of the plebs, which at once sets aside the general opinion of antiquity and modern enquiries, should be supported by proofs corresponding to the importance of the subject, and outweigh and completely refute all counter-arguments. How then is Niebuhr furnished with such evidences? They are simply the following. 1st, the fact that the Aventine was the prin-

cipal seat of the plebeians, and 2nd, the tradition that Ancus Martius settled the conquered Latins on the Aventine. These two points Niebuhr brought into connexion, and hence concluded that Ancus had introduced the plebs into Rome.[1] It did not indeed escape Niebuhr, that the tradition of the transplanting of the Latins is unhistorical. "It is impossible," says he, "that so large a population could be concentrated at Rome, unable to cultivate their distant fields." It must have struck him, as well as every other unprejudiced person, that in the whole historical time such a mode of proceeding was entirely foreign to the Roman policy. Göttling[2] has travelled as far as Babylon in order to find an analogy for the transplanting of the plebs, in the captive Jews. Herein he has indeed given himself unnecessary trouble, since he might have saved himself a good part of the journey, if he had first looked about in Sicily, where Gelo transferred the inhabitants of the cities he destroyed to Syracuse. In this example would also the presumptive source of the Roman tradition have shown itself, which, as so much else concerning the old Roman history, sprang from the brain of uncritical Greeks, and was based upon a mere historical tradition, or a political or religious institution. In the present case we know that the conquered Latins *were re-*

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[1] Dionysius (III. 37) however relates that Ancus received the Latins into the tribes, by which, of course, those of the Gentes, not the local tribes, are meant. Niebuhr, Rom. Hist. vol. i. page of note 965. Becker Altherthümer, vol. ii. Anmerk. 310.

[2] Röm. Staatsverfassung, § 87.

ceived into the state (in civitatem recepti) in the same way as still later in the great Latin war the conquered enemies partly obtained the Roman citizenship. Of this circumstance some fanciful writer made a real settlement, without reflecting, however, that the Aventine could not contain the population of several cities. The difficulties which lie in this statement many have felt. Puchta[1] explains the transfer of the Latins to Rome through the intention of the Romans to hold the conquered parties in check, by having them near; as if, when dispersed over the country, they would not have been less dangerous, as the history of all aristocracies shows, than if united in one point, organised, and in possession of strong hills, like the Aventine and the Esquiline. There is an inopportune tradition that, immediately before Ancus, Tullus also had taken the conquered Latins to Rome. These Latins, therefore, are stamped, without farther investigation, by Niebuhr, as patricians, and admitted into the curies and gentes. If we ask whence it came that so great a difference was made in the treatment of the same class of men within so short a time, Niebuhr has the answer ready, that, after the admission of the Albans into the ranks of the patricians, the three patrician tribes were filled and completed; and that, from the sacredness of the number, *three*, no fourth or fifth tribe in addition could be established. We try in vain to comprehend how the tripartite division in the Roman

[1] Institut. § 43.

State, which had thus only just arisen, should have become at once so rigid and exclusive and sacred, that it did not allow the introduction of any extraneous element. To this is added the gratuitous assumption of declaring that the transplanted Albans were the tribe of the Luceres, which stands upon a level with the paradox of making Tarquinius a Latin. This gratuitous assumption has raised general opposition; and some writers have taken the liberty of modifying Niebuhr's views.

Some have deduced with him the plebeians upon the Aventine, from the cities conquered under Ancus, but they add to them the Albans upon the Cœlius.[1] But it has not been considered that in this way the whole force of Niebuhr's conclusion, which certainly is not very strong, falls to the ground. This conclusion, namely, rests upon the connexion of the immigrants with the Aventine the quarter of the plebs; but the Albans were settled upon the Cœlius, which does not appear to be strictly a plebeian quarter. Thus, therefore, the assumption becomes more arbitrary. All proof is wanting for declaring the settlers on the Cœlius to be plebeians; for Dionysius[2] says, expressly, that they were received into the curies and tribes; and, as it is not convenient to hold them to be patricians, it will be perhaps best that

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[1] Göttling Röm. Staatsv. page 222. Huschke. Verfass. des Ser. Tull. 32. Becker Alterthümer, ii. 1. 135.

[2] Dionys. iii. 29.

we should consign them, and their companions on the Aventine, to the region of the imagination, whence, very inopportunely, they have been obtruded into the history of Rome.

Such, then, are the arguments upon which Niebuhr relies for rejecting, as a fundamental error, the theory of an original plebs coeval with the state, and upon which he builds his own theory of an original Roman state, consisting of patricians and clients alone. But the notion of itself, that, from the foundation of the state, there was a plebs distinct from the clientage, can contain nothing unreasonable; for Niebuhr[1] himself is of opinion that "in the three original towns a commonalty must from the first have begun to form itself, partly of persons received under the protection of the law, partly of clients, as well those who were free by birth, as those whose bondage had expired, by their emancipation with their patron's consent, or by the extinction of his race." Also Wachsmuth[2] insists upon this admission, although he adduces but slight grounds for it, as, for example, the legend of the Asylum and the rape of the Sabines, and the existence of the kingly dignity, which he supposed must have served for the protection of a class independent of the patronate. Others, as, for example, Becker,[3] discard entirely the notion of an original plebs,

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[1] Römische Geschichte, vol. I. page of note 963.

[2] Ältere Röm. Gesch. p. 186.

[3] Handbuch d. Röm. Alterth II. 1. p. 134.

and only admit that the clients formed a "species of plebs," but which only improperly could be so denominated. This is, therefore, outdoing Niebuhr, or perhaps carrying out more consistently Niebuhr's own theories; since, if we once admit a sudden establishment of a previously non-existing plebs, it is surely not apparent what we are to do with the few scattered persons "who in the three original cities, from clients or such people as were received under the protection of the law, became plebeians."[1]

The ancients, as is well known, are not acquainted with any other tradition than that Romulus in his original population separated patricians and plebeians.[2] It would be useless to collect in evidence passages in which this is clearly declared. Thereby we should not gain our object; for all such declarations Niebuhr and those who follow him explain as misconceptions arising from a false notion that clients and plebeians were one and the same. This view we have therefore next to explain before we can clearly ascertain the antiquity of the plebs.

The classical passage concerning the clients in ancient Rome is in Dionysius ii. 9. 10. There we find enumerated in detail the different rights and duties of the patrons with regard to their clients, and of these toward their patrons. At the same time Dionysius propounds the doctrine that the individual plebeians were subject in

[1] Niebuhr, Röm. Gesch. i. note of p. 963. [2] Liv. ii. 1.

groups to some one patrician as their patron. Thus, therefore, clients and plebeians are declared to be one, in the most decided manner. But in the course of his history Dionysius relates some facts which seem to be contradictory to this exposition of the clientage. Thus the clients in the contests of the two parties appear as a body distinct from the plebeians, opposed to them, and always ready to assist the patricians. Niebuhr explains this contradiction thus, that Dionysius, in the accounts in his historical narrative of the second class, must have followed such annals as represented the actual occurrences clearly and agreeably to truth; but that, on the other hand, in the first systematic exposition of the clientage, he must have been led astray by an erroneous view which he had imbibed from the institutions of his own time. That is, "in the 8th century of Rome it is true there still existed a kind of clientage which connected not only the freedmen among the city plebs with their patrons, but likewise many persons of good birth and small means with a protector of their own choosing, and generally the burghers of the municipal towns with the gens or house to whose protection previously their native cities had entrusted themselves."[1] Now, admitting that this was the nature of the later clientage (and in the main features it was so certainly), I ask if any one can hence deduce the notion of a clientage embracing all the plebeians.

[1] Niebuhr, Röm. Gesch. vol. i. page of note 1305.

The decided contrary is in fact the necessary conclusion. If it were true that Dionysius had purely invented the narrative (ii. 9 and 10) in which he adduces so many astonishing particulars, or that he framed it analogously to the institutions of his time, in that case surely he could only have imagined the clients as a body separated from the mass of the plebs, and not, as he really represents them, as being one with it. But Niebuhr is anything but inclined to declare the data of Dionysius in that remarkable passage to be valueless: and who would doubt but that Dionysius had old authentic sources before him whence he drew the material, to adorn it only with a few rhetorical flourishes? There is here no combination of numbers—no calculation of probabilities of which one perceives the origin in the brain of the pragmatic historian, as in the case of the narrative of the choice of the hundred senators out of the three tribes under Romulus, or the invention of a third person between the elder and the younger Tarquin. Here is a simple proposition in conjunction with others derived from authentic sources; and it stands in the most perfect harmony with the testimonies of Livy, Cicero and Festus, upon which we shall remark hereafter. On the other hand, one recognises, without difficulty, in the spun-out narratives wherein Dionysius, according to Niebuhr's view, unravelled the true nature of the clientage, a mere abstraction of the institutions of a later time. It was then that the clients were

a mass of low dependants, who would naturally side with their protectors, and were distinct from the free plebs. Nowhere is this meagre-spun web of Dionysius more pitiful, or more tedious than in the recital of the emigration of the plebs, to which, according to Becker,[1] as proofs of Niebuhr's theory, the greatest weight is to be attached. It would be useless to go through all the passages of Dionysius quoted by Niebuhr.[2] It must be apparent that they belong to the fictitious detail with which that plausible historian has managed to fill up the meagre outlines of the annals, and that the idea of a clientage lies at the foundation, which had been formed in the later time of the republic, and according to which the clients indeed belonged constitutionally to the plebs, but from private interests were connected with their patrons. How easily the species could be viewed as different from the genus and opposed to it it would be unnecessary now to remark.[3]

Just so are to be understood the passages of Livy quoted by Niebuhr.[4] Nothing is contained in them but what Livy himself and all modern antiquarians down to Niebuhr have conceived to be the simple truth. The clients are in his opinion

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[1] Röm. Alterthümer, ii. 1, note 344.

[2] Niebuhr, Röm. Gesch. vol. i. note 1314.

[3] Livius, v. 7. Senatus . . . laudare equites, laudare plebem; this looks as if the equites were distinct from the plebs; but they were in reality plebeians, who had volunteered to find their own horses for military service.

[4] Niebuhr, Röm. Gesch. i. note 1307.

plebeians, just as the Lictors,[1] and which according to Niebuhr himself they must at any rate have been after the Decemvirate legislation, by which he says they were amalgamated with the plebs. Whether Livy sufficiently reflected upon the circumstance that at first according to his own account all plebeians were clients, or whether after the view of a later time he looked upon the clients as a fraction of the plebs, will hereafter have to be elucidated. It will suffice to show from an example in a passage of Livy, how little from a mention of clients a legal separation of them from the plebs is to be inferred.

The historian relates (ii. 64) how "the plebs being exasperated refused to take a part in the election of consuls. The consuls were chosen by the patricians and the clients of the patricians." A similar occurrence is related in vii. 18, where Livy says, "The consuls, abandoned by a part of the populus, completed the election no less promptly with a thin assembly that remained." Therefore "a part of the populus" remained: and this part Livy as well here as elsewhere might have called the clients; for the reason why he did not do this is certainly not that assigned by Becker,[2] namely, that a real clientage did no longer exist after the whole institution had been dissolved, and the clients were amalgamated with

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[1] Liv. ii. 55. Quatuor et viginti lictores apparere consulibus et eos ipsos plebis homines.

[2] Handb. der Alterthümer, ii. 1, note 344.

the plebeians. Becker, it is to be supposed, with Niebuhr, assumes as the probable period of this dissolution, that of the decemviral constitution. Yet after the time in question clients were often mentioned,[1] quite in the same manner as before, so that there was no cause why Livy should not have named them also in the passage alluded to.

Niebuhr grounds the second leading-proof of his theory upon a fact from which I cannot help drawing exactly opposite conclusions. It is this: that during the various contests of the two orders in Rome there is not a word mentioned of a conflict between patricians and clients. If the clients were plebeians, Niebuhr thinks, we must admit contests between clients and patricians, but this we cannot do, since the clientage was of such sacredness and inviolability that we cannot suppose a disturbance of it in any way as possible. Consequently, he concludes, the clients must be different from the plebs.[2]

The sacred inviolability of the clientage.

It is indeed not to be doubted that what Dionysius (ii. 10) says of the sacredness of the clientage is quite right, that is to say, that the patron who failed in his duty to his clients was devoted to the infernal gods. But all that Dionysius adds concerning the constant peace between the two classes and concerning the mutual emulation to benefit each other, belongs to the fairy dreams of the good old time. On the other hand we

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[1] Liv. v. 32, for instance.

[2] Niebuhr, Röm. Gesch. vol. i. page of note 1316.

are justified, from the existence of a penalty, in inferring not only the possibility but even the real occurrence, of a crime, since the Romans were much too practical to enact a law punishing an unheard of offence. But it seems to have been imagined that there is no such thing as oppression which keeps within the limits of the law, or that the Roman patricians were either too noble or too unaccustomed to such. It has not been considered that in thousands of cases the patron could injure his clients without incurring the charge of breaking the law; and that the tyranny of the patricians against the plebeians was almost universally exercised under the protection of the law. A certain portion of clients, it is true, has been regarded as tenants of the patricians. Niebuhr also admits the fact, that it must have been free to a patrician to eject "a lazy and useless man" out of his tenancy, but that this must often have been repeated,—must have called forth disputes, and that oftentimes the limits of the law could be over-stepped,—this has been imagined to be quite impossible. Have the tribunes, however, been always protected by their being sacrosancti? Had the patricians always such a horror of heavenly punishment that they never permitted to themselves cunning, deceit, violence or murder, that they never applied the holy books and the auguries as instruments to their own selfish ends, that they never took under their protection the criminal who belonged to their party, and never bid defiance to the voice of justice? Either I

mistake human nature in general, and particularly that of the Roman patricians, or it could not be, but that avarice, cruelty, and selfishness disturbed the sacred connexion of patron and client in spite of the awful punishment pronounced against the evil doer. And how can we otherwise explain the silence on this point in our sources, unless by regarding the often injured plebeians as clients?

Its origin in the Asylum.

It is surprising that not only Niebuhr but all enquirers since his time have not been at all startled by the pretended continuance of an eternal peace between patricians and clients; but, on the other hand, they found it difficult to show how the extraordinary sacredness of the clientage arose. No explanation appeared sufficient except that derived from the Romulian Asylum. The subdued original inhabitants, it was thought, could lay no claim to the particular protection of the divinity, but must be satisfied with the clemency and humanity of the conquerors. This led Göttling[1] and Becker[2] to deduce the clients from such fugitives as were received into Rome through the asylum. Becker thinks that at least the inviolability which was imparted to new comers through the asylum was transferred to the original clients, who had arisen through conquest. It lies almost out of my way to elucidate this view; but I do it with the intention of showing that such an in-

[1] Röm. Staatsverf. § 64.

[2] Handbuch der Alterth. ii. 1, p. 131.

violability of the clientage is as unreal as any explanation of its origin is unsatisfactory.

The tradition of an Asylum is a pure invention, and happily one of such a nature that we can demonstrate it to be so. The institution of the Asylum was, like the word, purely Greek. The Romans had neither the name, nor, until the time of the triumvirs, the thing.[1] What Dionysius relates (iv. 26) of "a sacred asylum," which Servius Tullius built upon the Aventine hill, shows how carefully we must handle the Greek technical terms which Dionysius or other Greeks carelessly introduce into Roman history. From the course of the narrative it appears, that Dionysius meant the temple of Diana, where all the Latin nations offered yearly sacrifices and settled their disputes. A real asylum, therefore, this was not; nor do we hear of any suppliants availing themselves of it. But just as little is said of a continued use of the Asylum of Romulus, after once the original population was attracted by it. Comprehensive measures were ascribed to the successive kings for the increase of the population; but the Asylum is lost entirely out of view; and, as it seems, not without

The tradition of the Asylum is not historical.

[1] Cicero (Agr. ii. 14) says indeed: Sunt Sacella, quæ post restitutam tribuniciam potestatem nemo attigit; quæ maiores in urbe partim (or passim?) periculi perfugia esse voluerunt. This expression, however, implied only a general sanctity of all or several temples in which a suppliant might most readily find protection. Thus the Prætor Asellio fled to the temple of Vesta, which, however, would not have saved him, for some of his pursuers penetrated into the sanctuary. Appian. Bell. civil. i. 54. Dio. Cass. xlvii. 19.

reason; for in a later time we find the sanctuary at once walled round, and closed to every human foot and eye. But this very circumstance may explain to us the meaning of the old tradition. What kind of thing the walled sanctuary was, whether it belonged to the old Sabine altars, which were made to give way to those of the Etruscans,[1] or whether, possibly, it was dedicated to the tutelary god of the city of Rome, whose secret name was identical with that of the town, that we may leave undetermined; in short, the place was dedicated, inviolable, ἄσυλον,[2] and this sufficed to an imaginative Greek, to bring it into connexion with an old custom, according to which fugitives came from the neighbouring cities to Rome. This was in consequence of the "Jus exsulandi" which existed in historical time with Latium, and which, being extended, justly or not, to the mythical period, gave rise to the tradition that a great number of exiles were collected together in Rome from the neighbouring places.[3] But, even if we admit that the right alluded to existed from the beginning of the State, still no reflecting man will thence conclude that an appreciable portion of the Roman population had its origin in this; still less will he venture to explain the sacredness of the

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[1] Liv. i. 55.

[2] The asyla, of which Plutarch (Sylla c. 12) speaks, as existing at Olympia and Epidaurus, are only sacred and inviolate places.

[3] I have expressed these views more in detail in the classical Museum, 1845, in a short essay, entitled "the Asylum of Romulus." Niebuhr already hinted at the truth. Röm. Gesch. i. page of note 824.

clientage from this institution, which now even lacks the religious consecration of the asylum.

We have investigated Niebuhr's proof of the existence of a clientage distinct from the plebs, and have thereby arrived at quite opposite results; we will now, in order still more to justify ourselves in dissenting from Niebuhr, consider a conclusion to which he found himself forced by his hypothesis. In some of the passages in Livy, upon which Niebuhr lays particular stress, the clients appear as participators in the Comitia of the Centuries. But in Dionysius, where the clients side with the patricians against the emigrated plebeian army, they appear free from the regular duties of military service; a circumstance which follows from the fact also that they belonged to no tribe, and were excluded from the Comitia-Tributa. The striking fact, therefore, appears, as a necessary conclusion from these data, that the clients were subject to the census in the Comitia of the Centuries; but, nevertheless, had no connexion with the army.[1] Such a proposition one would think only requires to be mentioned to excite universal disapproval. The nature of the Comitia of the Centuries, it is true, has hitherto so far been misunderstood, that writers have almost always considered their object to have been the fusion of the patricians and plebeians into one people,[2] instead of which one ought to start from

Niebuhr's clients vote in the centuriata comitia, but are exempt from military service.

[1] Niebuhr, Röm. Gesch. vol. i. page of note 1340.

[2] Becker, Handbuch der Alterth. ii. 1, page 164. "So much is certain that the principal object of the Servian Constitution was

the principle, that the only object which called the centuriate constitution into existence, even before Servius organised it, and which maintained it under Tarquinius Superbus, was merely that of forming the people into an army. But the union of the Comitia of the Centuries with the military organisation of the people was still so far evident, that Niebuhr's view, of which we speak, did at least excite surprise. Peter,[2] therefore, tries to remove the contradiction by denying the participation of the clients in the Comitia of the Centuries, and by explaining their appearance in the Campus on the ground that they were not strictly speaking clients. We see where this leads. Niebuhr's proof of his proposition is dropped, exactly as in the theory of the immigration of the plebs to Rome; but the proposition itself, which is now without foundation, is nevertheless clung to. The old mode of viewing the clients as a part of the plebs, devoted to the patricians, is adopted where it is convenient, and is rejected as incomprehensible where one thinks proper to twist it into a proof that clients and plebeians were entirely different.

From such contradictions Becker escapes, by

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to give political independence to the plebs, and to give influence in the state to property as opposed to birth. Arrangements of a military and financial nature, however important, were yet secondary to the first-mentioned chief object of the Servian Constitution." More correct is the opinion of Zumpt, Abhandlungen der Berliner Academie 1836, p. 133.

[2] Peter, Epochen. der Röm. Verfassungs geschichte. ch. 25.

the simple statement that the clients performed military service, an opinion which certainly, according to the right view of the nature of client-age, has probability and even proof in its favour. But it is not apparent how Becker reconciles the passages from Dionysius, in which he finds the clients he alludes to, and where nevertheless they appear as free from service. Besides, he seems to think that the military service of the clients was peculiar and different from that of the plebeians; for he speaks of the duty of clients to go to war with their patrons, *somewhat like their vassals*. What are we to think of this vassal service? And what was the relation of the "vassals" at a later time to the plebeians in the legion? Were they grouped round their lords, or did they stand in rank and file? And, if the latter, wherein consisted their difference from the plebeians? Perhaps somebody may be lucky enough at one time or other to discover them amongst the Rorarii, Accensi, Velati, Fortes or Sanates, who form a sort of rubbish-chest, from which all kinds of old utensils may be fetched upon any emergency. But, if Becker thinks the vassal-service of the clients was limited to the time before the supposed admission of the plebs into the state, then we are brought back again to Niebuhr's paradox, that the clients without performing military service voted in the Comitia of the Centuries.[1]

[1] Göttling (Röm. Staatsverf. p. 130) has adopted a peculiar method of explaining the appearance of the clients in the Co-

Proofs against Niebuhr's theory.

We have seen upon what proofs Niebuhr rests his views of the clients. It now remains for us to adduce here some of the weightiest testimonies, which, since they would not square with his ideas, Niebuhr was obliged to reject as unsatisfactory. Livy[1] makes Manlius say to the plebs, "As many as you have been, as clients, about each separate patron, so many will you be now against one enemy." Cicero[2] says, "Romulus held the *plebs* distributed into the clientages of the chiefs." Festus,[3] "The name *patrocinia* began to be used when the plebs was distributed amongst the fathers, that it might be safe by their power." The passage in Dionysius (ii. 9) runs, "And he gave the plebeians as a deposit to the patricians, leaving it free to each plebeian to take the patron that he himself wished." The passage in

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mitia of Centuries. According to him the trades' guilds consisted of clients. From the number of these guilds Servius Tullius raised the musicians, smiths and carpenters from the state of an imperfect franchise to the full right of citizenship, and he distributed them into four centuries. It is not quite evident how these can be supposed to be still clients; but, in some way or other, they must have been such; for, according to Göttling, "their old dependence on the patricians continued to exist." These then are the clients who voted for the patricians in the comitia. It is to be supposed that Göttling concludes, farther, that the patricians intended, with these musicians, smiths and carpenters, to fight the plebeians, or with them, and without the plebeians, to march against the Volscians. Thus it is apparent in what a maze of contradiction and nonsense we get entangled as soon as we attempt to arrange dreams as historical truths, and to make them harmonize with authenticated facts.

[1] Liv. vi. 18. [2] Cicero de Repub. ii. 9.

[3] Festus s. v. patrocinia, p. 233, ed. Müller.

the same book, 11th chapter, is to the same effect: "It was not only in the city itself that the plebeians were under the protection of the patricians, but also each of her colonies, and the cities associated for alliance and friendship, and the cities conquered in war, had as guardians and patrons such of the Romans as they pleased."[1] I hope such passages will appear in another light when we are freed from the prejudice of Niebuhr's view. Then only shall we venture unconditionally to reject them, when we can set up equally powerful evidence in opposition; or when, in the described institutions we find something unnatural and contradictory, which necessarily urges us to another supposition. But that there are no such contradictions will, I think, be shown most clearly when we consider more closely the nature of the clientage.

The clients were a conquered race.

After having totally rejected the theory concerning the Asylum, nothing remains to us but to recognise in the original clients the conquered aboriginal inhabitants of the Roman territory.[2]

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[1] Compare also Plutarch, Romulus, ch. 13.

[2] There is a remarkable similarity between freedmen and clients; and this is a proof that the latter also were formerly slaves. The conquered, namely, are slaves of the conqueror; and to his grace alone they owe their life and freedom. They surrender themselves "in fidem populi Romani," just as the clients "in fidem patronorum (Gellius v. 13. 4 clientes . . . . . qui sese in fidem patrociniumque nostrum dediderant). Hence clients and freedmen are frequently confounded; the latter no doubt, as well as slaves, were not very numerous in the earliest periods of the Roman state, no more than in those of Greece, according to Herodotus VI. 137. The freedmen therefore,

This, namely, we must take as our starting point, that the Roman State has arisen by conquest. The importance of this proposition, and the fact that hitherto it has remained almost unnoticed, renders it necessary to pause awhile, and to interrupt our explanation of the clientage by a slight digression.

Origin of the Roman State in conquest.

Niebuhr has sufficiently brought to light the failings of the Roman annalists which arise from exaggerated patriotism. When we read of victories and triumphs, which are airy dreams or distorted out of positive defeats—when we see the total subjection of Rome under Porsena repre-

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whom Servius is said to have received into the four metropolitan tribes and centuries, were only clients, that is plebeians, whom this king distributed into tribes. (Dionysius iv. 22.) As such they are recognised, especially by Zonaras vii. 9, where the organisation of the clientage is ascribed to Servius Tullius, in the passage relating to the reception of freedmen into the state, which is commonly ascribed to Romulus. *Real freedmen, with a few isolated exceptions, were not admitted to the citizenship prior to the censorship of Appius Claudius.* (Livy ix. 46.) If, as Becker (Handb. der Alterth ii. 1. 193) supposes, they had been contained in the four metropolitan tribes ever since the time of Servius, it is beyond our comprehension how their descendants, two hundred years afterwards, could be distinguished from the other members of the tribes, and considered the dregs of the people. The fact is, Appius Claudius for the first time admitted the freedmen into the tribes, and into all tribes without distinction. This is what Livy (ix. 46) means to express by saying, Humilibus per omnes tribus divisis forum et campum corrupit. Plutarch (Poplicola vii.) says the same, "To the other freedmen (besides Vindicius) Appius gave the suffrage a long time afterwards, as a popular measure." Not long after Appius, however, in the year 304, Quintus Fabius Rullianus confined the freedmen to the four city tribes; and this was now done for the first time, as is clearly seen from Livy's expressions, ix. 46.

sented as a contest glorious for Rome, we ought not indeed to wonder that we hardly find any trace in our authorities of victories over Rome by the Sabines, and of a later one by the Etruscans. And yet both these events are as sure as the existence of Rome itself.

Since the time of Niebuhr the opinion has been unconditionally held that the Roman State was formed by the union of three different races, the Pelasgians, the Sabines, and the Etruscans. Upon the ground of this admission, Göttling[1] has attempted to delineate the characteristics of the three original elements of the Roman nation. To the Sabines he refers "the conservatism and the political checks in the Roman constitution." The Latins, being of Pelasgian race, are "of a higher political culture," and represent "the democratic element." These arbitrary distinctions I should not mention if Becker did not speak of them as of a clever characteristic of the Sabine and Latin races.[2] The most remarkable point maintained by Göttling is, that the Sabines did not adopt the mode of settling disputes according to the law of the Fetiales, which mode was common, especially to the Pelasgic races of Italy;[3] that consequently, a real political community[4] was not to be found among the Sabines.[5] Their original state was therefore on the whole the same as that of the

[1] Röm. Staatsv. p. 1.
[2] Handb. der Alterth. ii. 1. Anm. 5.
[3] Göttling Röm. Staatsv. p. 3.
[4] Ein Staat. [5] Ibid. p. 2.

Homeric Cyclopes! "They have no deliberative assemblies of the people, *no laws*. They dwell upon the heights of mountains. Each judges his own wife and children, and nobody cares for his neighbour."[1] The testimonies which Göttling refers to[2] either say nothing at all,[3] or would rather suggest the contrary;[4] as, for instance, the tradition of the murder of King Tatius by the Lanuvians.[5] But who would draw such conclusions from such legends? With how much more plausibility might we not contend that the Romans did not acknowledge the law of nations, since their ambassadors, the three Fabii, fought against the Gauls, and were yet not disavowed by the senate, because they carried off the Sabine women, and refused satisfaction to the Sabine ambassadors.[6] In Livy (xxv. 18) a Campanian challenges his Roman guest to combat. Hence Göttling concludes that the Sabellian race did not respect the law of hospitality; but that very case shows that hospitality existed amongst them; and, according to Ælian (iv. 1), it was legally enjoined on the Lucanians. The war between Rome and Capua appeared, in the case adduced, a sufficient

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[1] Röm. Staattsv. p. 4. [2] Livy viii. 23, x. 12.

[3] Livy (ix. 3) even calls the Samnites "faithless." This is rather conclusive evidence!

[4] Liv. i. 30.

[5] Dionysius ii. 51. For according to the law of the Fetiales the people of Lanuvium ought to have declared open war with the Romans, instead of treacherously murdering their king.

[6] The Fetiales. Zonaras, vii. 3.

ground even to the Roman consuls to cause them to allow their countrymen to fight his former guest. It is true there are also Samnite Fetiales mentioned;[1] "but we must recollect," says Göttling,[2] "that this, according to Livy's own narration, is an isolated fact, and that the name of Fetiales is only given to the Samnite ambassadors, according to analogy with the Romans." Just as much to the point are the proofs for the remaining points of this "clever characteristic," by means of which it is attempted to establish a national distinction in the Roman people between the Latins and the Sabines. The worst of the matter is that such a difference does not exist; and so every investigation as to its nature must be vain.

The aboriginal Pelasgian population.

Whether Niebuhr has succeeded in proving the original population of Latium to be Pelasgian cannot here be fully discussed. The Siculi, whom he declares to be Pelasgi, are described by Hellanicus[3] as Ausonians, consequently as Opicans. Cato[4] gave the name of Auruncans to the oldest inhabitants of Rhegium, a territory which is peculiarly Siculian; and Philistus declares the Siculi to be barbarians,[5] namely, Ligurians expelled by the Umbrians and Pelasgians. His testimony is particularly strong, since he lived near enough to the Siculi and Sicani to give an opinion concern-

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[1] Liv. viii. 39.
[2] Ibid. page 23.
[3] Dionysius, i. 22.
[4] Origines, 3.
[5] So also Thucydides, iv. 25, Dionysius, i. 9, 16; see also Strabo, vi. 1, 6; 2, 4.

ing them.[1] Niebuhr's view rests only upon this, 1st, that the Siculi are often mentioned in connexion with the Italians, so that, for example, Italus was called king of the Siculi;[2] and, 2ndly, that the Pelasgians, who built the Pelasgian wall in Athens, were also called Siculi.[3] This evidence is not sufficient to outweigh all that is opposed to this view. It leads only to the conclusion that the name of Siculi signified something specific in the cognate tongues of the people of Italia and of Hellas, and was on this account often repeated, as, for instance, in Attica,[4] and also in Epirus. Just as little is it allowable, from the mention of the Tyrrhenians in Latium,[5] to draw the conclusion that Pelasgians had dwelt there. But this has been done because one portion of the Greek Pelasgians, to the north of the Ægean Sea, were called also Tyrrhenians, and the two names conjoined were used as one, some writers fancying that they found Pelasgians where-

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[1] The Siculi and Sicani in Sicily are identical. The difference in the termination of the two words is casual, and cannot establish a difference of race. Similar variations occur in the name of the Aequi, who are called Aequuli and Aecani (in Greek Αἶκλοι and Αἰκανοί). Among the Alban localities, mentioned by Pliny (Hist. Natur. iii. 9), that of Sicani occurs. In addition to this, the Sicani are called Ligurians (Thucydides vi. 2), and the Siculi of Latium are identified with the Ligurians. Philist. in Dionysius, i. 22.

[2] Thucydides, vi. 2. Servius ad Virg. Æn. i. 2.

[3] Pausanias, i. 28. 3.

[4] Pausanias, viii. 11, 12.

[5] Hesiod Theogon. 1011; Dionysius, i. 29; Plutarch. vit. Romuli.

ever Tyrrhenians are mentioned.[1] But the name of Tyrrhenian is significative,[2] like that of the Siculi, and as is in fact originally every national appellation: and it may therefore easily be found applied to several peoples related to each other only as branches of one common stock, but so different from one another in language, religion, and political constitution, that only the profoundest scientific research can discover a relationship or a descent. Such scientific investigations were not made by those ancient writers who have transmitted to us their notions of national genealogies. It may perhaps be admitted that, in some cases, the memory of pre-historical migrations may have been kept alive, and that, in others, attentive observers, from similarity in language and manners, may have inferred an affinity between different nations; but in by far the most numerous cases it was merely similarity of the name that suggested the supposition of a descent of one nation from another. It is true that these similar-sounding names do indicate a real connexion between nations, as when, for example, walled cities are called Larissæ; since such a coincidence can arise only from the af-

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[1] It is probable that Hellanicus was not the first to do this; but he certainly reasoned in the manner indicated when he stated that the Pelasgians from Hellas migrated by Spina to Croton and founded Tyrrhenia. Compare Dionys. i. 28.

[2] In this case the ancients have perhaps for once given a happy derivation, by connecting the name of Tyrrhenians with Τύρσις, turris, so that they would be designated as inhabitants of fortified places. Dionysius, i. 26.

finity of language, and this again from the affinity of races; but we can by no means thence infer direct descent, or such a similarity of national peculiarities that we are allowed to place two such peoples upon one line in contrast to other peoples.[1]

Thus the Greeks fancied that they recognised the Tyrrheno-Pelasgian names of their own coun-

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[1] The ancients have been guilty of great absurdities in their ethnological speculations built upon false etymologies. Thus Herodotus, vii. 61, 62, relates that the Medes derived their name from Medea, and the Persians from Perseus; the Marsi brought themselves into connexion with Marsyas; the Iolai or Ilians, on the island of Sardinia, claimed to be an Ilian or Trojan colony; Evander, from Palantium, in Arcadia, is said to have founded the city on the Palatine hill, and the Etruscan city of Pisa is reported to be a colony of Pisa in Peloponnesus. Such ridiculous combinations as these are by no means peculiar to antiquity alone: they recur wherever a nation begins to speculate about its origin. Thus the ancient Britons were seriously derived from Brutus, the Trojan; and as late as 1301 this descent was made use of in a document, in the course of some dispute with Scotland, to establish certain claims of the English crown. (Grote, Hist. of Greece, vol. i. p. 639.) Of similar value are the derivations of the Britons from the Italian Bruttians, or even from Prutemia, that is Prussia. (Camden Britannia, vol. i. page 6, ed. 1722.) This list might be increased considerably; but it seems that enough has been said to prove satisfactorily the proposition maintained in the text. We shall therefore content ourselves with showing its bearing on the much controverted tradition of Æneas. Mr. Bamberger (Rhein. Mus. 1839) proposes an explanation, which seems far preferable to that suggested by Niebuhr. Mr. Bamberger derives the tradition from the worship of the Penates in Lavinium, which was considered identical with the old Pelasgian worship of the Palladium, and thus suggested the tradition that Æneas had brought this image to Lavinium from Troy. However, a simpler explanation seems necessary to me. The Briges, who dwelt in the neighbourhood

try in many Italian names; and they met with willing assent to their conjectures from strangers for whom, at an early as well as at a later period, everything Greek had a charm to which every native element of national life gave place, if it would not coalesce with it. I consider indeed the original population of Latium to be connected

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of Dyrrhachium, were derived from Phrygia (Appian, Civ. ii. 39): the Phrygians themselves are said to have been originally called Briges, and to have come from Macedonia (Herod. vii. 73). Similar national names occur in several localities, a fact which is explained by the assumption that this word had a certain signification in all the Indo-European languages. There were Bryges in Thrace, (Herodotus, vi. 45), Allobroges and Latobriges in Gaul (Cæsar. Bell. Gall. i. 5), Bebryces in the same country (Dio. Cassius. Fragm. 6). Now my opinion is, that the name of the Aborigines in Latium belongs to the same stock. The prefixed A is omitted by Lycophron (V. 1253), who in relating the tradition of Æneas calls them Boreigoni. The similarity of sound in the original name of this people, and in that of the Phrygians, suggested the idea of a Phrygian colony, as is clearly perceptible in the account of Servius (Virgil. Æneas, i. 6). Cato in Originibus dicit . . . . . primo Italiam tenuisse quosdam, qui appellabantur Aborigines: hos postea adventu Æneæ Phrygibus iunctos Latinos uno nomine nuncupatos. The tradition was first localised in Lavinium, which was the first metropolis of the Latin cities. But when more importance was attached to Trojan descent, the Romans claimed it for themselves; and, as they could not deny their descent from Alba, they were obliged to make the Albanians Trojans. This again was facilitated by a similarity of name. The Albanian Silvii or Julii pointed to Ilium, Rea Silvia was also called Ilia, and among the Albanian townships was that of Ilionenses. (Plin. Hist. Nat. iii. 9.) Perhaps even the name of Alba is to be derived from the stem of Silva, which could be changed into Ilva and Alba (as Elba from Ilva), and might thus seem allied to Ilium. Compare Grote, Hist. of Greece, iii. chap. 16, p. 282.

with the Pelasgians of Greece: the proof however I find not in the traditions of the ancients, but in the language of Latium. I admit, therefore, only a general remote similarity, and not one so decided that a Greek of the eighth century on comparing Latins and Sabines, could fancy the former more nearly connected with his nation, although it is not impossible that they were a shade more like it.

Sabellian immigrations into Latium from the Apennines

But, even admitting that a relationship did exist between the Siculi and the Pelasgians, this is only an insufficient ground for finding Pelasgic peculiarities amongst the later Latins. It is stated that the Siculi, driven from Latium, emigrated to Sicily. This tradition must not induce us to think that all the Siculi emigrated; but the part remaining behind disappeared amongst the conquerors who in successive immigrations descended from the Apennines into the plain. At the present time it is a vain attempt to dispel the clouds that hang over these various migrations, as, since Cato, every writer had his own ideas as to the Aborigines, Casci, Sacrani, Ligures, &c. as it suited him best, so that now every support fails for an historic investigation. Only so much can we maintain with confidence,—that the conquering Sacrani were not Pelasgians. The authors who explain their name from the tradition of the "sacred spring" (ver sacrum) consider them probably as Sabellians.[1] Niebuhr[2] has remarked

[1] At least not as Pelasgians. The legend of the sacred spring is certainly Italian; and consequently Myrsilus believes the

that Alba Longa reminds us of the town of Alba on the lake Fucinus; and he conjectures with great probability that it was founded by the Sacranian conquerors. There are indeed many traces pointing to a Sabine descent of the Albans of Alba Longa. The Alban chief, who figures in the final struggle with Rome, had a true Sabine title; for Mettius is certainly identical with Meddix. The name appears in different forms. Mettius Curtius is one of the Sabines who fought against Romulus;[3] Modius is the Sabine founder of Cures, the mythical type of Romulus, son of the god of war and of a priestly virgin;[4] Septimius Modius is the first king of the Æquiculi;[5] Vettius Messius a Volscian leader;[6] Sthennius Mettius a Samnite chief.[7] Even the name of the Alban king Cluilius is Sabine[8], as well as the worship of Vesta, which, according to the common tradition, was introduced into Rome by Numa Pompilius

Alba Longa probably a Sabine colony.

Tyrrhenians, whom he makes migrate from Italy to Hellas, as a colony of this kind, to be indigenous Italians, and not Pelasgians (Dionys. i. 25, 26, 28). Dionysius indeed, who is desirous of deducing every thing Italian from Greece, pretends to know that many Greeks and Barbarians were acquainted with the custom of the sacred spring. Dionys. i. 16.

[2] Röm. Gesch. vol. ii. note 23. [3] Liv. i. 12.

[4] Dionys. ii. 48. [5] Valerius Max. x. [6] Liv. iv. 28.

[7] Festus, s. v. Mamertini. Müller (Etrusk. Introd. i. 7) believes Meddix to be one and the same with Mettus and Mettius.

[8] Liv. iii. 25. After Numitor's death Romulus gave the Sabines yearly magistrates. Zonaras, vii. 4. So at least reads the Paris Edition. But probably Ἀλβανοῖς is to be read instead of Σαβίνοις, though Plutarch (Romul. 26) has the same story respecting Sabines, not Alban.

a king of Sabine extraction. Now it is self-evident that the conquerors coming down from the mountains did not confine themselves to Alba, but from this fastness subdued all Latium to the sea. Only in rugged mountains can vanquished races hold out against invaders; the plains they must leave to the conquerors. Hence we find the statement very natural that all the Latin cities were colonies of Alba, a fact which we are not disposed, like Niebuhr, to question,[1] on the ground that Ardea, Lavinium, Laurentum and other towns appear in the common traditions older than Alba. We have only to understand colonies, in the later Roman sense, according to which they would be established in cities already existing. Of Lavinium it is expressly stated that it received an Alban colony;[2] and of other towns this is equally credible.[3] Thus the old character of Latium, even if it should have approached to the Pelasgian, would be wiped away and the Sabine substituted.

As in Latium so also in lower Italy, the Sabine race had extended itself to the sea in the oldest time before history begins. The Opici whom Niebuhr regards as standing between the Pelasgians and the Sabines, though Göttling incon-

[1] Niebuhr, Röm. Gesch. vol. i. page of note 568.

[2] Dionys. i. 67.

[3] In Velitræ the Sabine God Semo Sancus had a temple (Liv. xxxii. i.); but it remains undecided whether this temple owed its origin to the old Sabellian Sacrani, or to the Volscians who were long in possession of Velitræ. In Aricia there was a Sabine sanctuary of Egeria. Virg. Æn. vii. 761.

ceivably calls them Pelasgians, are, according to my view, of Sabine origin. A satisfactory proof of this lies in the Oscan language spoken by the Opici and also by the Samnites. Their name of Opici also is only a peculiar form of the name which embraces the whole Sabine race and can be discovered in the forms Sabinus, Sabellus, Samnis, Apulus, Omber, Umber, Æquus, Japyx.[1] The mountain range where this people was originally settled was called Apennines, and Ops was a principal divinity among them.[2] Nay, perhaps, it is not too bold to conjecture that the name Siculus, which is identical with Italus, also comes from Sabinus,[3] which, if confirmed, also supports the view that the so-called Italian Pelasgians are a branch of the Sabines of central Italy, only

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[1] The form Samnis has the cognate liquid sound *m* instead of *b*; its Greek form is Σαυνις, where the *b* re-appears in the soft *v*; in the form *Apulus* we have the very frequent termination *ulus* (Siculus, Aequiculus, Albula, Romulus) attached to the stem *Ap*, deprived of the initial digamma, which in *Sabinus* appears as *S* and in *Japyx* as *J*. With respect to the latter name we may compare the Greek form Ἰουδακίλιος, which Appian uses for the Latin *Ottacilius*. Thus *Japyx* exhibits the same stem *Ap* with a digamma. The same is found in *Aequus*, where the guttural has supplanted the labial, as in equus for ἵππος: thus it appears, that the town of Æcæ in Apulia points also to a Sabine origin. In *Omber* and *Umber* we must recognise the same stem with the insertion of *m*, which easily takes place before *br*, as in fimbria, from fibra. Hence we meet with Umbrians also in Campania (Plin. Hist. Nat. iii. 9).

[2] Dionys. ii. 50.

[3] In Virgil (Æn. vii. 178) Sabinus is the father of Italus.

more civilized than their kinsmen on the mountains.[1]

The History of Rome opens with a Sabine Conquest.

Roman History properly begins with the appearance of a new race in Latium, the Sabine Quirites, who advanced along the Tiber from Cures. Of an earlier time we know barely this, that there was already a place, Rome, the old Roma Quadrata upon the Palatine[2], but of an historical tradition of this time there can be as little question as of a history of Alba. With the appearance of the Sabines first begins a sort of History of Rome, and even then only in mythical form. The conquest of the Capitol is the first authentic fact; and this, properly understood, throws some light on the beginning of the city. For it will be established that the Sabine Quirites were not received into the Roman state by a treaty, but that as conquerors they *formed* the state. We ought not to be diverted from this, because by such a supposition we have the testimony of historians jointly and severally against us. Their evidence on this point is valid for those only who share their false patriotism; whoever is free from this must suspect their flattering narratives from the first. We will not, however, establish our pro-

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[1] The Suburra is called by Dionysius (iv. 14) Σαβωράνη (scil. μοῖρα). It is called Sucusanus (pagus), which name probably came from the Greek form, and shows how Siculus could be formed from Sabinus.

[2] Dionys. iii. 5. The other passages in Becker Handbuch der Röm. Alterth. i. p. 92.

position by merely discrediting the opposite; but we will endeavour to support it on evidence as distinct and clear as can be looked for in this early period.

I have already indicated how the investing of the Capitol by the Sabines is to be understood. As soon as a complete political union of the two townships on the Palatine and Quirinal, belonging respectively to Romans and Sabines, is admitted, that race must be supposed to have predominated which was in possession of the Arx on the Capitoline. A complete union, tradition acknowledges from the beginning; for Titus Tatius seems to be introduced only to make the voluntary alliance of the two races plausible, and to veil the fact of the Sabine conquest. He vanishes almost immediately; and tradition says nothing about a practically existing double senate and popular assembly. The Sabine Tatius seems indeed to have made place for a Latin; but it is in appearance only; for, when we consider the personality of Romulus, we find he is really a Sabine hero. His proper home is Cures;[1] he constituted the state according to curies in the way of the Sabines (as hereafter will be further shown), and after his death he is honored as a Sabine God. In the same way that he introduces into Rome the civil and military organisation of the Sabines, so Numa does the Sabine religious character. The Roman State is a state of Quirites: and the full Roman

[1] Dionys. ii. 48.

franchise is contained in the Jus Quiritium. The tradition which deduces the names of the thirty curies from Sabine women points to the conjecture that the curies were of Sabine origin.[1] We arrive at the same conclusion from a correct derivation of the word Curia. Whoever thinks it ought to be derived from *curare* overlooks the warlike nature of a conquering race, and assumes an independent political activity of single curies, viz. that of separately debating and counselling, which is neither probable nor demonstrated. The fundamental principles of the Roman State rest upon its military organisation. The oldest Roman people was an army; and the oldest divisions of the people were military divisions. The spear was the symbol of the divinity, which all the Romans honoured as their ancestor; and from the spear *(curis)* they themselves were called Quirites. A spear also, with some emblem, was the oldest standard; and those who ranged themselves

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[1] Plutarch's (Romulus 20) opposite opinion, that many Curiæ are named from places, is no more a valid objection than the observation of Varro (in Dionys. ii. 47), that Romulus had organised the Curiæ before the time of the rape of the Sabines. Why should not the places also have been named after the Sabine family names? Besides, all the Curiæ were built at one place: the Veteres Curiæ on the Palatine, the Novæ on the Compitum Fabricium (see Becker, Handbuch der Alterth, i. p. 98.) The names preserved by Festus (s. v. Novæ Curiæ) of the four old curiæ, namely, Foriensis, Rapta, Veliensis, Velitia, are not critically certain: and who would refer the curia Foriensis to the Forum? The situation of the Veteres Curiæ on the Palatine shows that the Quirites were not limited to the Capitoline and Quirinal.

about a single standard formed a company. Now, as Manipulus and the German Fähnlein first signified the standard and then the body of troops united under it, so do I consider *curia* to denote the body of men belonging to a curis.[1] But the curies, which according to this are of Sabine origin, embraced the whole Roman people, that is, the reigning burghers:[2] and the consequence from this is unavoidable, that the Quirites founded the Roman state as conquerors.

Sabine Rome conquered by the Etruscans.

If then, through conquest, the foundation was laid for a ruling and for a subject population, yet the following events have modified the relation of the two classes, in the peculiar manner in which we know them in history. And it was at first a conquest which again exercised the greatest influence on the development of the Roman people: we mean the conquest of Rome by the Etruscans. It lies out of the sphere of this investigation to show how far the Etruscan influence extended over Rome, and how it affected the Roman State and religious character. We can only refer to the results which are already gained in this field by men like O. Müller. Supported by these, we maintain that it was only in consequence of an Etruscan conquest that there could be exercised by Etruria upon Rome an influence so lasting, as is apparent even upon a cursory examination.

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[1] Göttling also thinks nearly so. Römisch Staatsverf. § 37. p. 60.

[2] The word populus itself is Sabine, as is shown by Sabine proper names, such as Pompilius.

We need not now say that we agree with the unanimous opinion of antiquity, which declares the Tarquins to be Etruscans. Any opposite hypothesis, as, for instance, that of Niebuhr, creates a double difficulty. It has first to show to what nationality the Tarquins belonged, if they were not Etruscans; and, secondly, in what manner the Etruscan element found admission in Rome. I deem it insufficient to answer the last question, by asserting that the Etruscan element was introduced into Rome by degrees, and in a friendly manner perhaps, as at a later period Greek mythology, art and literature were naturalised in Italy. For such a natural process as this we require centuries of peaceable intercourse between both people, which we are not justified in assuming to have existed in the times before the establishment of the republic. Traditions moreover, like that of the clearing of the Capitol from Sabine sanctuaries for the building of an Etruscan temple, indicate clearly enough a sudden and forcible introduction of Etruscan manners.[1]

A similar argument must be drawn from the changes in the Roman constitution which were ascribed to the older Tarquin. The detail of these changes, as to which the different authorities contradict one another, are perhaps beyond the reach of all historical research; but it is not ne-

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[1] The name of the Tarpeian rock is probably itself only another form of Tarquinian, as conjectured by Schwenck. Rheinisch. Museum, 1839, p. 484.

cessary for our object, if we only keep in view the simple fact, that under Tarquin a radical change was introduced into the Roman constitution, whereby a very considerable number of new citizens was received into the state.[1] I think that the conqueror, without rejecting the old political organisation, and without depriving the old citizens of their rights, the continuance of which they had perhaps stipulated at their submission, founded his Etruscan State upon the Quiritic foundation. In this proceeding a peculiarity of the national character is exhibited of which we find several indications in the history of the Etruscans, viz., the facility of adapting themselves to new circumstances, and of appropriating foreign manners. It was by this facility that this Alpine people in a short time became a race of bold, seafaring men, and that they made Greek art and mythology their own.

The Etruscan conquest extended over the whole of Latium.

The assertion of an Etruscan conquest of Rome is strengthened by the fact that all Latium also was subdued by the Etruscans. This is distinctly stated in so many words by Cicero;[2] and borne out by the very name of the town

[1] See the passages in Becker as to the intended increase of the tribes (Alterthüm, vol. ii. 1, note 494). It is to be borne in mind that Cicero ascribes to Tarquin the wish to change the names of the *existing* tribes, whilst all other authorities speak only to an intended addition of *new* tribes and names.

[2] "He conquered all Latium in war," says Cicero of Tarquinius. Cicero de Repub. ii. 24.

of Tusculum,[1] as well as by a statement of Varro,[2] who says, that *many cities in Latium* were founded with Etruscan ceremonies. This is shown also by the decidedly Etruscan character of the town of Fidenae.[3]

It is true that almost all traces of the fact of an Etruscan conquest have been erased from the annals of Rome; but this cannot prevent us from admitting such a fact any more than every mention of a triumph in the Fasti would compel us unhesitatingly to admit a victory. And fortunately there are some traces also of a genuine tradition which, though faint, still may serve for the purpose of opposing opinions which are not better authenticated. We point first to the legend of

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[1] Tusculum was also one of the chief allies of Tarquinius in his wars against Rome.

[2] Varro, L. L. v. p. 144. Many built towns in Latium with Etruscan ceremonies.

[3] Niebuhr (Röm. Gesch. vol. ii. page of note 998) tries to make out that, if Fidenae is called Etruscan, this means only that the town was Tyrrhenian, i. e. Pelasgian. This is certainly not giving Livy's view of the matter, who, when he says (Liv. i. 15) that the people of Fidenae were Etruscans (Tusci), means evidently to convey the idea that they were of the same race as the Veientians and Tarquinians; for, in relating the war of Tullus Hostilius with Fidenae, he accounts (Liv. i. 27) for many of the people of that town understanding the Latin language, by reminding his readers that there had been a Roman colony there; and further on he gives a description of their wild fanatical mode of attack with torches, which seems to have been peculiar to the Etruscans, and quite strange to the Romans. Compare Livy, iv. 33, vii. 17. Virg. Æn. ix. 521.

> Parte alia horrendus visu quassabat Etruscam
> Pinum, et fumiferos infert Mezentius ignis.

the bondage of Latium, under the Etruscan Mezentius. Moreover, according to Cato,[1] the Volscians also were at one time subject to the Etruscans; and Plutarch[2] mentions a tradition that Romus, a king of the Latins, expelled the Etruscans.

The war with Porsena proves an Etruscan conquest.

But the war with Porsena is here of especial importance. Ever since it has been satisfactorily shown that Porsena had nothing to do with the reinstating of the expelled Tarquins, he has lost his fixed place in chronology, as it was only his supposed connection with the Tarquins which assigned to him his time in the beginning of the Roman republic.

But is it not too bold to place Porsena in the beginning of the Etruscan period of Rome, and to ascribe to him the first conquest? I believe not; chronology is quite at fault in these early times. It is often based on a mere guess; hence the most arbitrary and discrepant statements are rashly made. One tradition, for instance, fixes the immigration of the Claudian house to Rome in the reign of Tatius, whilst this event is generally admitted to have occurred in the first year of the republic.[3] But the fabulous Porsena is very well suited for a fabulous age—the beginning of the republic is almost too historical for him. The leading points of his war against Rome, as Niebuhr has already remarked, are taken from the

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[1] Servius ad Virg. Æn. 9, 567. [2] Romul. 2.
[3] Sueton. Tiber. 1.

war of Veii, in B. C. 476, and can therefore not be looked upon as historical.[1] Porsena is the fabulous representative of the Etruscan dynasty, which first subdued Rome, and was afterwards expelled. We obtain by means of our theory a very tolerable explanation of the singular custom of offering at public sales the "goods of king Porsena,"[2] for which Livy, out of the many existing attempts at explanation, chooses a very lame one. We find in this custom a memorial of the confiscation of the property of the Tarquins, which took place after their expulsion.

Rome and Latium rise against the dominion of the Etruscans, first under Servius, and then under Brutus.

That the dominion of the Etruscans in Rome was oppressive is sufficiently known, and answers exactly to the character of the people, as it has developed itself in the constitutions of Etruria. The subdued population was undoubtedly reduced more and more to a state of servitude; the aristocracy became more united, and separated itself from the pre-existing Quiritic aristocracy. We see the consequences of this course in a revolution which, under the guidance of the Latin Servius, aimed at the re-establishment of a free constitution. The anti-aristocratic tendency of the measures of Servius is not to be mistaken. We refrain here from entering more minutely into the circumstances of that revolution, and the counter-revolution under the younger Tarquin. A careful investigation would show that in reality the final expulsion of the Tarquins, and the esta-

[1] Liv. ii. 51. [2] Liv. ii. 14.

blishment of a republican government, was only a successful repetition of the earlier revolution; but the tendency of both was not merely political or social, but at the same time national. The attempt was made to get rid of the sway of the Etruscan element. Hence also the revolution was not limited to Rome, but all Latium took part in the struggle, either on the Roman or the Etruscan side.

True character of the Latin war in the first year of the Republic.

I will take this opportunity for somewhat purifying the early history of Rome. The contest of the Romans against the ejected Tarquins has been universally represented as a war against the thirty Latin cities;[1] and yet Ardea was already at enmity with the Tarquins, before the outbreak of the war, and then allied with the republic, as was also Præneste.[2] Laurentum, where Collatinus lived as an exile, could not be thought friendly to the Tarquins. That dominion over Latium which

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[1] Liv. ii. 18. Dionys. vi. 74, 75, v. 61. The list of Latin states given by Dionysius is certainly unauthentic, as Niebuhr justly argues (vol. ii. page of note 51); only it is not, as Niebuhr says, taken from the table which contained the Latin league; for, even if the Latin towns were given on this table, they would certainly not have been arranged in alphabetical order, as they are with Dionysius: but the list is scraped together at hazard, by some annalist, from names of still existing or decayed Latin towns, as Xenion (according to Tzetzes' commentary to Lycophron, 1214) has enumerated the hundred towns of Crete, of which Homer speaks.

[2] Liv. ii. 19. "Præneste revolted from the Latins and joined the Romans." Nevertheless Præneste is introduced in the lists of Dionysius v. 61, as one of the 30 Latin cities hostile to Rome!

Tarquin had obtained, according to the tradition, through treachery and cunning, but in reality perhaps through the force of arms, and which assuredly he did not exercise more mildly than he did his government in Rome, was certainly not unanimously protected by all the Latins against the Romans, who acted as liberators, though perhaps some cities, such as Tusculum and Gabii, quite helpless in the power of the Tarquins, were compelled to side with the tyrant. The conjecture is perhaps unfounded, but I do not mean it to be more than a conjecture, that the dominion of the Etruscans, in its steady and gradual advance towards the south, at length received the first check in Campania before Cumæ. Aristodemus, the tyrant of Cumæ, was the first to vanquish the numerous hosts of the Etruscans, Umbrians, and Daunians, before Cumæ; and he then appeared at Aricia, as the conqueror of Aruns, who is called a son of Porsena. The connexion appears clear: and it is probable that Rome only acted a part in the war of the Latins against the Etruscans, and did by no means take the whole weight of the war against both on its own shoulders.[1]

[1] A striking analogy of the carelessness of the Roman annalists that speak of Latium in general, where they only mean individual Latin cities, is afforded by the history of a later period. Livy (vi. 2, & 11) speaks of the defection of the Latins and Hernicans in a way calculated to imply that the whole league of these two people was meant. But in the 6th book, 21 chap. it appears that the Lanuvians first revolt, whilst the Tusculans, Gabinians, and Lavicani remain on the side of Rome.

Taking this view of these events, we shall no longer see cause to wonder, as Niebuhr does, that the Latins, so entirely overwhelmed, as it is stated, at the Lake Regillus, appear soon after on a footing of equality as allies of Rome. This equality was neither a concession nor the price of their support against the revolting plebs, but the natural consequence of a common war carried on by independent allies.[1]

[1] Still more disfigured than the account of the Latin wars, as shown above, is the history of the war with the Sabines, in the first year of the republic. Dionysius relates of it, with great prolixity and tediousness, a variety of battles and victories, marches and counter-marches, stratagems, and other points of detail, as if he had seen daily bulletins of the generals. Livy, with his usual good sense, passes it over with a few words. The following points remain unexplained respecting this war: first, how the Romans at that time could come into such close contact with the Sabines; and, secondly, how this war, though contemporaneous with the wars of the expelled Tarquins, did not at all affect them. It is true that Dionysius makes Sextus Tarquinius figure as a leader of the Sabines: but his only authority for this was evidently the great probability suggested by the circumstances themselves, supposing it true that the Sabines were making war upon the Romans, whilst Tarquin was attempting to regain his crown. The same consideration induced him to relate how Sextus Tarquinius, and Octavius Mamilius, of Tusculum, the king's son-in-law, took part in the war of Porsena against Rome. In addition to the two difficulties just alluded to, the conditions of peace mentioned by Dionysius (v. 49), according to which ten thousand jugera of olive plantations, &c. &c., were to be ceded to the Romans, are entirely apocryphal. I have no hesitation in maintaining that the whole war owes its place in the annals to a direct misunderstanding; and I extend this assertion to all the Sabine wars, so constantly recurring from the beginning of the republic to the time of the Decemvirate. My reasons are the following. It is probable that in some of the family annals, the Latins living in

The Valerii and the Valerian laws.

The principal object of the present work is to trace the developement of the Roman constitution. I do not contemplate any criticism of historical facts. Still, where facts serve to cast a light on

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the plain east of the Anio, up to the foot of the hills, were called Sabines. This can hardly be said to be a mistake; for the Latins and Sabines, as we have seen above, were of kindred races, and the Sabines settled in Latium might very probably be called by their ancient name. As a proof, we may mention the Sabine cow which a *Sabine* wished to sacrifice at Rome, in the common temple of the *Romans* and *Latins*, in order to obtain the supremacy for his own country (Liv. i. 45). The town of Nomentum occurs among the thirty Latin towns in the treaty of Sp. Cassius, and it is also called a Sabine town; so are Collatia and Regillum (Liv. i. 38, Virg. Æn. vi. 774, Liv. ii. 16, Dion. v. 40); and yet the Lake of Regillus is said to lie in the territory of Tusculum, which is confessedly a Latin town (compare Arnold, Hist. of Rome, i. p. 128). Plutarch (Romulus 16 and 17) treats the people of Cœnina, Crustumerium and Antenna as Sabines: and Dionysius (vi. 68) relates how the Æqui marched through the territory of Tusculum into that of the Sabines, and, having crossed this, appeared before Rome, thus evidently placing Sabines between Tusculum and Rome, in a country commonly included within the boundaries of Latium. It is then not improbable that in some of the annals the league of Sp. Cassius with the Latins was represented as a league with the Sabines, and hence the imagination of the annalists was busy in inventing a war with the Sabines as the immediate cause of this league. Accordingly Livy (ii. 26) relates how a short Sabine war was terminated by A. Postumius, the dictator of the battle of Regillus, who it appears at this time had not been elected to any regular office. We are at a loss to find a cause why neither of the consuls of the current year marched against these Sabines, especially as one of them, Servilius, had just returned with a victorious army from a war against the Volscians. It is quite evident that this Sabine war is only a dim reflection of the war with the Latins, terminated at the battle of the Lake Regillus; which war was placed in the year preceding the league with the Latins, by those annalists who did not strictly discriminate be-

institutions, or even where we can establish, *en passant*, more correct views, on some historical facts, I have not hesitated to examine them, with, however, the greatest possible brevity. Upon

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tween Latins and Sabines. The war with the Latins in question, as we learn from Livy, had no fixed place in the chronology of the annals, whereby the process of doubling it and repeating it in two different places was greatly facilitated. In the same manner one Volscian war was made into two, namely, a war against the Auruncans, and one against the Volscians (Niebuhr, Röm. Gesch. vol. ii. page of note 189); and the kindred Æqui and Volscians are similarly mistaken for one another (Niebuhr, Röm. Gesch. ii. page of note 227). Now with respect to the Sabine wars, there may be observed the curious phenomenon, that they are mentioned almost exclusively in connexion with members of the Gens Valeria, from which circumstance it may be concluded that the family annals of that Gens in particular used the name of Sabines to designate the people usually called Latins by others, and that they sometimes also substituted this name for that of Æqui. Thus, for instance, according to Livy (ii. 53), when a T. Valerius was consul, the Sabines appear as allies of the Veientes, although afterwards (ibid. 54) they are not at all mentioned at the conclusion of the peace with the Veientes. Similar facts may be noticed in Livy, ii. 62, iii. 25, iii. 15, iii. 38. ii. 57. Sabine wars, in which no Valerii take part, are mentioned in Livy ii. 63, 64, iii. 26, and the last one repeated in iii. 30. It has been remarked, as a matter of surprise, that in 449 B. C., after the consulship of L. Valerius and M. Horatius, the Sabine wars suddenly disappear, until, after the lapse of more than a hundred years, the Sabines are finally subdued. Hence the inference has been drawn that in the above mentioned year the Sabines must have suffered a great defeat; but the Sabine war of 449 is clearly only a repetition of the Æquian and Volscian war of the same year (Livy, iii. 60). The reason for the sudden total cessation of the Sabine wars is this, that from 449 until 414 no Valerii occur in the Fasti. The annalist who, after this blank, undertook to continue the annals of the Valerian house, avoided the error of his predecessor, who had applied to Latins and Æquians the name of Sabines.

these grounds we will now consider somewhat more closely the events in the beginning of the republic, without, however, losing sight of our principal object, to which rather this short historical enquiry will naturally conduct us.

It is not my design to venture on the disentangling of all the conflicting theories respecting the first year of the republic and the chronology of that time. Only a few leading features are to be discovered in the wild chaos with a certain degree of accuracy, and to these we will restrict ourselves, without indulging in hypotheses and fancies. Plutarch[1] states, that, after the expulsion of the Tarquins, it was at first expected that the people would choose a single supreme magistrate (στρατηγός) in the place of the one expelled, but that, out of hatred of the monarchy, they introduced the dyarchy of the consuls. This tale Plutarch probably invented, for how should he have heard anything of a plan of that dark time which was never executed? But nevertheless this notice is more useful than many a documentary tradition, since it points at the true course of events, as we shall attempt to establish in the sequel.

Improbability of the common notion that the monarchy was suddenly changed into a republic.

Nothing certainly can be more unlikely than the common theory, that the establishment of the consulship took place by a sudden transition in the very year of the expulsion of the Tarquins. In Dionysius's silly narrative[2] Brutus delivered

[1] Poplic. 1. [2] Dionys. iv. 73.

over Lucretia's corpse a long speech, wherein he detailed the constitution now to be established in all its details, as if he had carried it about with him for years. This constitution then starts suddenly into life, and proves itself in every respect practicable. Thus the ancients dreamt about the omnipotence of legislators; thus did they relate of Lycurgus (particularly the guileless Xenophon, in his book upon the Lacedemonian state), that he radically destroyed everything which had been in force among the Spartans, either as law or custom, and that, as by a miracle, he remodelled not only the Spartan constitution but also the Spartans themselves. But such a thing never has happened, and never will happen; and in Rome particularly political developement has been more steady and gradual than in any other state. Nowhere has there been less philosophising on political theories or ideal constitutions. We venture, on this account, with the greatest distinctness, the position that the course of events at the origin of the republic was not that which our sources assert, that rather a state of transition intervened between the abolition of monarchy and the introduction of the yearly consuls, which the annalists wholly overlooked, and which it is therefore our intention to trace, if possible.

Niebuhr's attempts at solving the difficulty.

Niebuhr felt this difficulty; hence his conjecture of the provisional government of the "*four Romans*," of Brutus, who represented the plebs, and of Valerius, Lucretius, and Collatinus, as representatives of the three patrician tribes respec-

tively.[1] Still this is an hypothesis which cannot be any further pursued or supported, and which in no case removes the difficulty. Nor can we approve of what Niebuhr says of the dynasty of the Tarquins and the Valerians.[2] Niebuhr compares the transition usual in the Grecian states, from monarchy through a dynasty to a republic, with Rome, where Collatinus, by reason of his connexion with the family of the kings, is supposed by him to have possessed an exclusive right to the highest magistracy, and where the signal distinction of the Valerian family may be significative of a similar right enjoyed by the Valerians. But the ideas of hereditary government and legitimacy were foreign to the Romans. The family of the tyrant required not to be indemnified for the loss of the throne. What right the Valerians should have had to a like preference does not appear: and after all Niebuhr's theory does not solve the original difficulty, as it still admits the establishment of two annual consuls, with limited powers,[3] in the first year of the commonwealth. We must therefore find a different solution of the difficulty; and for this purpose we will first ask, what was the most probable course of events under the circumstances?

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[1] Röm. Gesch. vol. i. page of note 1142.

[2] Röm. Gesch. vol. i. page of note 1147 and 1190.

[3] I perceive that Becker, in the 2nd part of the 2nd vol. of his Roman Antiquities, thinks the sudden introduction of the consular constitution to be remarkable, and only explained by the preparatory measures ascribed to Servius.

Necessity of a dictatorship in revolutions

No revolution can be undertaken and completed with success if the mass of the people is not led on by some superior intellect. At the dissolution of an existing legal authority the only authority remaining is personal and *de facto*, which in proportion to the danger of the position is more or less military and dictatorial. The Romans especially acknowledged the necessity, when circumstances required it, of submitting to the unlimited power of a dictator. Such a chief they found, at the time of the revolution, in Brutus. Collatinus also may, during a certain time, have stood in a similar manner at the head of the state, probably from less pure motives than Brutus, in consequence of which he succumbed to the movement which he in part may have evoked. After Brutus, Valerius Publicola was the recognised supreme head and the arbiter of events in Rome with dictatorial power, until his legislation made an end of the interregnum, and with all legal forms founded the true and genuine republic with two annual consuls. The dictatorship is found in the Latin cities as a state of transition between monarchy and the yearly prætorship; and we may conjecture that also in Rome the similar change in the constitution was effected in a similar way. In important historical crises the Romans always availed themselves of the absolute power of a dictator, as in Greece, with similar objects, Aesymnetae were chosen. Examples are afforded by the decemvirs, by Sylla, Cæsar, and the Triumvirs: in fact nothing can ever be successfully

The dictatorship the natural point of transition from a monarchy to a republic with annual magistrates.

accomplished in such cases by a deliberating, delaying and vacillating popular assembly.

But in the present case we do not require to confine ourselves to such general arguments. We have testimony which leaves us in no doubt as to the true course of affairs; and to these we now turn. How long the dictatorial constitution lasted must remain undecided; for we must renounce the idea of a chronology of that time. It appears to me not impossible that the period between the expulsion of the kings and the Valerian laws, which in our authorities is represented as a year, may have embraced ten years, or much more. To this conclusion I am led, in the first place, by the internal probability of a long continued fermentation; and, secondly, by the statement in Livy (vii. 3), that according to an ancient law the Prætor Maximus had to drive the annual nail on the Ides of September. This Prætor Maximus can only be the dictator. Were he one of the two consuls he must be called Prætor Major. All having command in the army were called prætors;[1] and the *one* who was called Prætor Maximus must have stood at the head of the whole army. The driving in of the year-nail is properly the duty of the dictator, as the cited passage of Livy shows, and must, with the introduction of the consulate, gradually have fallen into oblivion. A considerable number of years

Probable duration of the state of transition.

[1] Pseudo. Ascon. ad Cicero Verr. i. 14.

must have elapsed, however, during which this custom was formed ere it disappeared under the consuls.[1]

P. Valerius Publicola first dictator.

It is a remarkable phenomenon that the annals do not agree in the name of the first dictator,[2] although the names even of both of the first tribunes of the people, and of the first quæstores parricidii, after the ejection of the kings,[3] and of the first quæstores ærarii, are certain.[4] Some mentioned T. Lartius, and others M. Valerius.[5] The cause is this: that the de facto dictatorship of P. Valerius was passed over in some annals which mentioned as the first dictator him who first was chosen after the passing of the law de dictatore creando.[6] Both statements have therefore a foundation; only, in that concerning Valerius, the first name is improperly given as Marcus. If we enquire more accurately, it will appear that all the Valerii of whom we hear in the beginning of

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[1] Is it too rash to see in the following passage a reference to the expulsion of the Tarquins, and the introduction of the dictatorial constitution (Liv. viii. 18): "So a tradition having been brought out from the annals that at one time, in secessions of the commons, a nail was fixed by the dictator, and that by that expiation the minds of men distracted by discord had been restored, it was ordered that a dictator should be created for fixing the nail." I confess, however, that the plural "secessions" is rather perplexing.

[2] Liv. ii. 18. [3] Plut. Pop. 12. [4] Tacit. Ann. xi. 22.

[5] Müller (Festus Suppl. Annot. ad Qu. iv. 23) shows that the source from which the article NOVEM in Festus is derived makes a Valerius to be the first dictator.

[6] Liv. 2. 18.

the republic may be reduced to one, viz. Publicola. The Valerii who concern us are[1]—

1. Volesus.

2. P. Valerius Publicola. 3. M. Valerius Maximus. 4. M'. Valer. Max.

5. P. Valerius. 6. M. Valerius. 7. M'. Valerius Maximus.

All the Valerii reducible to one.

Both the sons of Publicola (No. 5 and 6) were only mentioned in the poetic description of the battle of Regillus, where they both fell as young men. Niebuhr has already remarked[2] that they both are supposititious. From such an invention Dionysius did not shrink. He has also imagined a T. Tarquinius to substitute him as a combatant in the battle of Regillus for the nonagenarian Tarquinius, the exiled king, whom he supposed by this time too old to engage in the battle. No. 4 and 7 we easily discover to be identical. To them was applied the tradition that a Valerius was the first dictator. Now some annals set this dictatorship in the year 498, where they had nothing to relate of it. Others waived the right of the Valerii to the first dictatorship, and made M'. Valerius (No. 4) dictator in the year 494; but here they were guilty of a great blunder. The year 494 had no dictatorship, as every incident of the tiresome long narrative of Dionysius shows.[3] In that year 10 legions are said to have marched in three armies under the dictator and the two consuls, against the Sabines, Æqui, and Volscians.

[1] Niebuhr, Röm. Gesch. vol. ii. note 8, remarks that the pedigree of the Valerii exhibits surprising evidence of negligence.

[2] Röm. Gesch. vol. i. page of note 1232. [3] Dionys. vi. 23—45.

Niebuhr has pointed out how exaggerated is this number of ten legions.[1] The campaign of Valerius with the army of debtors is a mere repetition of the twice repeated story of the consul Servilius.[2] Its fictitious character is betrayed by Livy's statement that the dictator, who had made the levy, could not dismiss the army, because, forsooth, the men had sworn obedience to the *consuls*.[3] The cause of this falsification is obvious. A certain place in the annals was to be found for the dictator Valerius, as his *de facto* dictatorship, which preceded the establishment of the consulship, was overlooked. But for the popular name of a Valerius there could be no more fitting place than in the history of the rising of the plebs (B. C. 494). On this account a Valerius is also mentioned among the ten ambassadors whom the senate sent to the sacred hill; and he induced the people, so it is said, through his eloquence[4] and his influence, to return to the city. The annalists had no clear perception of the difference between the rising against Tarquin and that of the plebs against the patricians; and they confounded the two by representing them as al-

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[1] Röm. Gesch. vol. i. note 1329. [2] Dionys. vi. 25. 29.

[3] Liv. ii. 32. "Quia in consulum verba iuraverant." That it was not necessary *in consulum verba iurare* is shown by Livy, vi. 2, where a dictator makes a levy, and makes the soldiers take the oath of obedience to himself. Dictator delectum habuit ita ut seniores quoque *in verba sua* iuratos centuriaret.

[4] Dion. vi. 69. Cicero, Brut. c. 14.

most equally democratic. Hence they explain the word Publicola as friend-of-the-people, although the word has as little to do with *colere* as with *plebs*, and is only a secondary form of Publius as Æquicolus is of Æquus.[1] The Valerii of that time were in no way such friends of the people, that is, the plebs, as they are held to be. The prosecutor of Sp. Cassius, the Quæstor L. Valerius,[2] and M. Valerius, the prosecutor of M. Volscius,[3] indicate this clearly enough. We shall see, by and bye, from the Valerian laws, that P. Valerius was indeed a friend of the populus, but could not be called a friend of the commonalty in a wider sense. But, as he was erroneously supposed to be well inclined to the plebs, and as the two revolutions were confounded, a Valerius was introduced into the history of the rising of the plebs, just as the plausible Dionysius, from the same reason, invented a tribune Junius Brutus, who is only the elder Brutus over again.[4]

In the year 494 there was, therefore, neither

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[1] The name Publicola, one of the many forms derived from populus, as Publius, Publilius, Publicius, Popillius, was also borne by the Gellii.

[2] Liv. 2. 42: "That party in the state (the Patricians) appointed as consuls M. Fabius, brother of Kæso, and L. Valerius, *more hated of the two by the plebs as he was the prosecutor of Spurius Cassius.*" Dionys. viii. 77. 87.

[3] Liv. iii. 25.

[4] Niebuhr (Röm. Gesch. i. page of note 1154) thinks this Brutus not entirely imaginary, but that at some later time there was a tribune of that name, who was erroneously placed by Dionysius in the year 494. Our own explanation is sup-

a Dictator M. Valerius nor any other dictator. Now we can proceed farther, and say that M'. Valerius (4 and 7), and M. Valerius (3) are the same. Manius (M') is palpably a correction from Marcus (M), which is not found in every author; not, for instance, in Cicero, Livius, Zonaras;[1] and where it occurs (as in Dionysius and the Fasti triumph.) it is a result of the calculation, that M. Valerius, according to the old tradition, fell at the battle of Regillus, and consequently could not have been dictator at a later period.

Of the seven Valerii now only two remain, P. Valerius Publicola and his brother, M. Valerius Maximus. These too, probably, are only one person, originally introduced into different annals each with a different pre- and cognomen, and thus passing at a later period for two different individuals. As an historical person there only exists P. Valerius, for every thing which is related of M. Valerius is transferred to him from Publius. The only occasion where M. Valerius appears so acting that his brother cannot be substituted, is in the narrative of the consecration of the capitoline temple by the consul Horatius, which M. Valerius tried to disturb in the absence of his brother, by an inauspicious message. But even here one of our authorities does not mention M. Valerius. It

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ported by the analogy of Valerius, and the circumstance that the Tribunus Celerum, Junius Brutus, might easily have been changed into a tribune of the people.

[1] See Niebuhr, Röm. Gesch. vol. i. page of note 1328.

is Dio Cassius who relates that Publicola sent a messenger in order to interrupt the Consul Horatius.

The identity of P. Valerius and M. Valerius evident from the traditions respecting the erection of a residence.

But the identity of these two Valerii is quite evident, from the traditions of the building of the house on the Velia, the spur of the Palatine hill, which separates the valley of the Forum from that of the Colosseum.[1] There Publicola built a house, whereby he fell into a suspicion of attempting to make himself tyrant. In order to justify himself he had it pulled down, and obtained thereupon a plot of land at the foot of the Velia.[2] Of M. Valerius some say[3] that he obtained from the people a house upon the Palatine, or that there the people *built* him a house. This house and that of Publicola are evidently the same. It lay, according to Dionysius, in the *best part of the Palatine.*[4] But the best place of the Palatine was naturally where the palace of the kings stood, that is, the Velia, where it was crossed by the Sacra via. Here dwelt Tullus Hostilius,[5] Ancus Martius,[6]

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[1] Becker Topogr. p. 246. [2] Plutarch, Poplicola, 20.

[3] Dionys. v. 39. Asconius ad Ciceron. in Pis. 22, p. 13, Orell. Varronem autem tradere, M. Valerio, *quia saepius vicerat*, aedes in Palatio tributas. We ought to read: quia *Sabinos* vicerat. Plin. xxxvi. 15. 24.

[4] Dionys. v. 39, ἐν τῷ κρατίστῳ τοῦ Παλατίου. In a similar manner Dionysius (i. 87) designates the comitium as τὸ κράτιστον τῆς ἀγορᾶς, because it was that portion of the forum in which the patricians used to meet, distinct from the larger area assigned to the plebeians. Τὸ κράτιστον means therefore the most honourable and distinguished part.

[5] Varro ap. Non. ii. 51, page 531, Mer. [6] Solin. i. 23.

Tarquinius Priscus,[1] Servius,[2] Tarquinius Superbus.[3] Now as, according to Pliny,[4] the statue of Valeria the daughter of Publicola, who was generally called Clœlia, stood *in the vestibule of the house of Superbus*,[5] it is an indisputable conclusion that the house which Publicola inhabited was none other than the late regal palace. But the house of M. Valerius was the very same, although many annalists may have thought the contrary, not knowing that the Velia and the *best place of the Palatine* were identical; and, as they supposed that for two different houses also two different Valerii were required, a second Valerius was added to Publicola, provided with a pre- and cognomen and called a brother of the former.

The same circumstance which proves more particularly the identity of Publius Valerius and Marcus Valerius leads us back again to the thread of our investigation, as showing, that Publicola was not a consul in the common sense, but the immediate successor of the kings with dictatorial power. For it is a palpable error when our authorities state that Publicola gave umbrage to the people by building a house on the Velia, "*in a high and strong situation*," where it

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[1] Liv. i. 41. Solin. i. 24.

[2] Cicero, Rep. ii. 31.

[3] Plin. Hist. Nat. xxxiv. 6, 13, s. Becker, Topogr. 239.

[4] Hist. Nat. xxxiv. 6. 13.

[5] By this passage the common opinion is refuted, that after the ejection of the Tarquins the palace was demolished.

might be an "impregnable citadel."[1] The Velia was neither steep nor high. A house on its top could, in regard to its military position, alarm no one. Whosoever attempted to assume absolute power in Rome had to take possession of the Capitol, and not of the Velia. The popular displeasure manifested against the house of Publicola on the Velia originated therefore from other causes. It was the palace of the kings, and reminded of kingly power. So long as Valerius possessed the unlimited royal prerogative he resided undisturbed in the royal palace: but, when he introduced the consulship by the laws bearing his name, then he vacated this residence in consequence of a distinct provision in these laws, and built himself a house at the foot of the Velia.[2] With the erroneous idea of the threatening position of the house upon the Velia, another error is connected, namely, that a house was there *first built* for Valerius. The annalists knew of the building of a house (namely, at the foot of the Velia), and referred this to the earlier house, without farther consideration; for how could they suppose that the people should have *given*

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[1] Liv. ii. 7. Consuli deinde qui superfuerat (i. e. P. Valerio) ex favore non invidia sed suspicio etiam cum atroci crimine orta. Regnum cum affectare fama ferebat, quia nec collegam subrogaverat in locum Bruti, et ædificabat in summa Velia: ibi alto atque munito loco arcem inexpugnabilem fore.

[2] P. Valerio . . . locum sub Velia . . . populum *ex lege quam ipse tulerat* concessisse tradunt. Ascon. ad Cic. in Pis. 22, page 13, ed. Orell.

a fortified castle to Valerius? That did not suit. They changed therefore the tradition[1] which spoke of a house *given* to Publicola on the Velia, and either made Publicola build himself the house, or substituted M. Valerius, in order to transfer to him the tradition of the house *given* by the people.

P. Valerius by virtue of the dictatorial power re-organizes the centuriate assembly and the Senate.

The dictatorial power of Publicola is shown in his re-organisation of the constitution. According to Plutarch[2] he established the census, that is, the comitia of the centuries, for these two depended one upon the other.[3] Cicero[4] indicates the same when he says that the Valerian laws were the first which were confirmed in the comitia of the centuries. Also the restoration of the senate was attributed to Publicola by Festus Plutarch and Dionysius.[5] That such a measure

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[1] Declam. de harusp. resp. 8. A residence was granted by the people to Publius Valerius on the Velia.

[2] Popl. 12. Compare Dionys. v. 20.

[3] Dionysius, v. 20. "At this time took place the census and arrangement of war taxes which had been ordained by Tullius, discontinued during the whole reign of Tarquin, but renewed now by these men." (Valerius and Lucretius.) That this re-establishment of the comitia centuriata belongs to Valerius as dictator follows from the statement of Dionysius (v. 75), which in spite of the passage just quoted ascribes the first census to T. Lartius. Tradition mentioned the first dictator as the restorer of the census, and as Dionysius conceived that Lartius was first appointed to that office he thus contradicts himself.

[4] Cicero, Rep. ii. 31.

[5] The same is found in the narrative respecting the Dictator M. Valerius in the year 494 B. C. (Dionysius, vi. 44), that he admitted four hundred plebeians amongst the knights. The

could be undertaken only by a dictator is seen by an example in the war with Hannibal. The number of senators had then so fallen away that a considerable addition was necessary. The censors who made up in ordinary times the senate-lists seemed in this particular case insufficient; and it was determined to elect a dictator, although particular circumstances rendered this proceeding very extraordinary.[1]

The Valerian laws the Charter of the Republic.

But the chief proof of the proposed theory as to Publicola's dictatorship lies in an investigation of the Valerian laws, which unfortunately are known to us but very imperfectly.[2] Remarkable in the first place is the circumstance that Publicola *alone* carried them, and then proceeded to the election of a colleague.[3] If Publicola previously had only been consul, his conduct would have been inexplicable. He proposed his laws either voluntarily or not. In the former alternative it is not intelligible why, with his liberal policy, he should have been exposed to the suspicion that he attempted to subvert liberty. Plu-

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mistaking of knights for patricians and senators is frequent amongst the old writers. Julius Proculus is called a knight by Zonaras, vii. 4. We have already shown that the Dictator M. Valerius of 494 is only a repetition of Publicola.

[1] Liv. xxiii. 33.

[2] Cic. Rep. ii. 31; Diony. v. 19; Liv. ii. 7. 8; Plut. Popl. 10.

[3] Liv. ii. 8. Publicola being alone in office carried his laws, and afterwards held an assembly of the people for the purpose of electing a colleague. Dionysius, v. 19, says that he held office alone, and Plutarch (Popl. ii.) that he employed monarchical power to carry out his best and greatest measures.

tarch supposes him to have been afraid of the opposition of a colleague: but would not the majority in the comitia which adopted his laws be also in a position to give him a colleague who would cordially support him? On the other hand, if he gave his laws under compulsion, which is very improbable, the people could much more easily compel him to abdicate or to choose a colleague.

They establish the office of Rex Sacrificulus.

It has been already mentioned that Publicola, according to a provision in his laws, quitted the palace of the kings on the Velia. In this palace lived at a later period the Rex Sacrificulus.[1] Nothing is more probable than that the latter entered the house as Publicola left it, since the household gods of the regal palace, on whose account especially the Rex Sacrificulus continued to reside there, could suffer no interruption of their service. It thus follows, with fair certainty, that the office of Rex Sacrificulus was established by the same Valerian laws: and in this is seen an instance of these laws first annihilating the regal power and then dividing it amongst the republican offices.

They limit the duration of office of the highest magistrates.

In the same way Publicola was the first to limit the duration of office of the supreme magistrate.[2] He introduced a yearly election by the

[1] See Becker, Topogr. p. 226.

[2] Plutarch, Popl. 11. "He gave to all that chose it the power of aspiring to and canvassing for the consulship." I cannot agree with the explanations given of this passage by Niebuhr (Röm. Gesch. i. page of note 1171); and Göttling, (Röm. Staatsverf. p. 277).

people as well as a free competition. After the end of his year of office the consul was no longer to have any right to his office—it was to return to the people: and whosoever refused to give it up, and thus retained power against the will of the people,[1] drew upon himself the punishment threatened to tyrants. Such a law there must have been, as the Constitution allowed no formal deposition of magistrates: but the opinion prevailing among the annalists, that the yearly consulships originated simultaneously with the Republic, has obscured this clause of the law in our authors, and made it appear as if it were only aimed at those who proposed to take possession of the capitol with armed hands.[2]

They divide the chief power between two officers.

That the Valerian laws introduced the division of the office of the chief magistrates between two consuls appears from the above-mentioned tradition that Publicola, until the passing of his legislation, carried on the government alone.

We come now to that part of the Valerian laws which treats of the introduction of the Treasurers: and we cannot avoid examining more

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[1] Dion. v. 19.

[2] Niebuhr (ii. page of note 754) remarks very justly, from the Fasti, that it must have been a fundamental law never to choose the same consul in two successive years, whereby his responsibility would have been done away with. The consulships of Publicola make an exception to this. It was known that he remained in office a long time uninterruptedly; but this period has erroneously been divided into years of consular power instead of being given to his dictatorship.

minutely this complicated subject, although the result of our investigation will be to strike out this whole clause of the Valerian legislation as an interpolated one.

They leave to the consuls the nomination of the Quæstores ærarii.

The office of Quæstor dates from the time of the kings. It had at that period nothing to do with the administration of the exchequer; but the functions were merely judicial. The quæstors, identical with the duumviri perduellionis,[1] investigated and decided in criminal trials;[2] but an appeal to the people from their decision remained free. Their office was no standing one, but an extraordinary commission, as the story of Horatius[3] and the quæstiones of the republic show. So far all is clear: but, as to the mode of their

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[1] The statement in Ulpian (De Off. quæst. Dig. i. 15) speaks for this, Tullo Hostilio rege quæstores fuisse, whereby he means the duumviri, who judged Horatius. The same follows from Livy, ii. 41:—"I find in some writers that he was summoned for treason by the quæstors K. Fabius and L. Valerius, and condemned by a judgment of the people." Rubino, who assumes a difference between the quæstors and the duumviri, explains this passage by saying, that the quæstors were very often chosen to act as duumviri. Becker says the same thing (Röm. Alter. ii. 2. 330). He relies particularly upon the unproved assertion that the quæstorship was a standing office in the Republic. Now, as Manlius, according to one tradition (Liv. vi. 20) was tried by duumviri perduellionis especially chosen, Becker concludes that the quæstores parricidii then in office cannot be the same as these duumviri. This conclusion falls to the ground with the assertion that the office of criminal judge was an annual standing office.

[2] That is, as judges, not as public prosecutors. See Geib's Criminal process, p. 50.

[3] Livy, i. 26.

election, there are two contradictory statements. Junius Gracchanus[1] maintained "that even *Romulus and Numa Pompilius had two quæstors, whom they chose, not at their own good pleasure, but by the suffrages of the people.*" This theory, though so very distinctly stated, has been rejected by Rubino,[2] as overstrained in the interest of the party of the Gracchi, to which Junius Gracchanus belonged; and, on the other hand, Rubino has preferred the testimony of Tacitus,[3] who states what follows:—"There were quæstors already under the kings, as it appears from the Lex Curiata, which L. Brutus renewed. And the consuls retained the right of naming the quæstors, until the people themselves conferred this dignity, and, in the 63rd year after the expulsion of the Tarquins, first chose Valerius Potitus and Aemilius Mamercus, to accompany the army." Upon this authority, therefore Rubino states that the kings, and afterwards the consuls, down to the time of the Decemvirs, had the right of naming the quæstors. But the authority of Tacitus, as Becker has shown, does not so clearly outweigh that of Gracchanus, that we should credit it without further enquiry; and in this case particularly he has incurred the charge of a double error. Niebuhr[4] justly remarks, he had only second-hand information concerning the curiatic law in question. The vagueness of his expres-

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[1] Ulpian. Dig. i. 13.
[2] Untersuchungen, s. 315.
[3] Tacit. Ann. xi. 22.
[4] Röm. Gesch. vol. i. page of note 1156.

sion (regibus etiam tum imperantibus *instituti sunt)* does not show, as Rubino says, cautious criticism, but a cautious uncertainty. He, like Ulpian,[1] most erroneously thought of the Quæstores ærarii only, and the expression of the law (perhaps Consul quæstores *creato)*, which only implied that the consul should *preside* at the election, may easily have suggested the error, that the consuls had the right of an independent choice and appointment of quæstors. We see, therefore, no reason whatever to doubt Gracchanus' authority, and assume that, under the kings as well as (and so much the more) under the consuls also, the people, that is, the comitia of curies, had the choice of the Quæstores parricidii. The office, namely, continued to exist for some time under the republic, not as an annual one, as in earlier times, but as a sort of special commission for extraordinary cases. That it was an instrument in the hands of the aristocracy, is shown by the condemnation of Sp. Cassius and the accusation of M. Volscius,[2] for both of which quæstors were appointed. But the practice of trying criminal cases by these officers fell more and more into oblivion. Quæstiones, as they arose, could be entrusted equally well to an already existing magistrate ; and in many cases, as in that of M. Volscius, a dictatorship was more effective. At the same time some particular functions of the office passed over to existing magistrates, like the

[1] Ulp. Dig. i. 13.

[2] Liv. iii. 24. 25.

Ædiles; and finally the quæstorship was wholly lost, from the time of the establishment of the Triumviri capitales.

But the judicial quæstorship is very different, and to be separated most carefully from the office of Treasurer, Quæstor ærarii. This difference is unfortunately not kept in view by the ancients; and thence arises the difficulty of determining the origin and the early nature of this office.

Under the kings these Quæstores ærarii did not exist; in the administration of the exchequer the kings were bound to no determinate forms or persons. But as early as in the first year of the republic[1] this arbitrary authority was, according to Plutarch, taken from the consuls by a law of Publicola; and two quæstors, chosen yearly by the people, were charged with it. This statement is again contradicted by Tacitus, but on this occasion with more reason. His testimony, that in the year 63, after the expulsion of the Tarquins, the people for the first time chose the quæstors, seems quite authentic. That was the first year after the overthrow of the decemvirs; and the new right of the people was the result of a law of the consuls Valerius and Horatius.[2] We may therefore surmise that the statement of Plutarch regarding the law of Publicola is erroneous only in ascribing to Valerius Publicola what is true of the younger Valerius, a mistake

[1] Poplicola 12.

[2] Rubino Untersuch. p. 326.

that might easily be made by an annalist of the Valerian house, who did not clearly distinguish between the two Valerii. Our conclusion is, that before the time of the Decemvirs *there were no treasury-quæstors chosen by the people;* they were either named by the consuls or existed not at all as regular magistrates. The first is asserted by Tacitus: but, as what he says of the quæstors of the regal period, and of those mentioned in the Lex curiata of Brutus, is only referable to the criminal-judge, his testimony as to the chief of the treasury seems to afford no further explanation, unless we hold the two kinds of quæstors to be identical. This Rubino does; and he arrives, therefore, at the following results:—"At the establishment of the republican offices, the administration of the treasury was taken away from the consuls with the view of lessening their power; but, instead of appointing a new magistrate, whereby, against the interest of the aristocracy, the cooperation of the people would have been made necessary, the duties of treasurer were transferred to a magistrate already existing, the quæstor (criminal-judge) yearly appointed by the consul." Now—how the power of the consul was thereby to be diminished it is difficult to see; nor is it more apparent why, in order to escape the establishment of a new office, an extraordinary commission was changed into a permanent office, and had duties assigned to it which were as different as possible from those which it had in its former state. Thus then Rubino is compelled to sup-

pose a most unnatural transition of the original criminal-judge into the treasurer; so that the functions of the first office decreased continually as those of the second increased, not indeed as if the functions of the criminal-judge were less and less wanted; far from it; for new officers, the quæstores parricidii, were extraordinarily chosen to discharge them, officers who in every respect corresponded to the former quæstors, now changed into treasurers. What else is stated hereby than that the office of the old criminal-judges continued as an extraordinary commission, whilst, besides, quæstors of the treasury were established? Rubino has only given himself unnecessary trouble; and he supposes the Romans to have done the same; but this hypothesis is void of all internal probability and external proof. *Before the year* 447 (the consulship of Horatius and Valerius) *no treasury-quæstors existed as separate and regular magistrates.* Tacitus found it stated that in the year 63, after the expulsion of Tarquinius, the first quæstors were chosen by the people. Now, as he clearly identified with these the old quæstores parricidii, he boldly concluded that previously the office was dependent upon the consulship, and for this statement he availed himself of the misunderstood Lex Curiata of Brutus, which spoke of a *creation* of the quæstors through the consuls. The justice of our view is shown from this, that in Livy the quæstors before the time of the decemvirs are never mentioned as discharging the duties of the trea-

surers but only those of criminal-judges:[1] for instance:—"On account of the emptiness of the treasury, the *consuls* sold the spoil."[2] "Whatever was taken from the enemy the *consul* Fabius sold."[3] "Fabius (the *consul)* conveyed hastily the spoil from the camp to Antium."[4] "Cincinnatus the *dictator* having taken the enemy's camp, distributed the entire spoil amongst his own troops."[5] On the other hand, it is said of the dictator Cincinnatus, in the year 440 B.C. that he ordered the *quæstors* to sell those effects, and to deposit the produce in the public treasury."[6] In the year 409 B.C. "the consul ordered the *quæstors* to sell all the spoil by auction, and to carry the produce into the treasury;"[7] and in the year 395 B.C. under Camillus's dictatorship, "the greatest part of the spoil was put into the hands of the *quæstor*, and no great share distributed to the soldiers."[8] And again, "the spoil was given up to the *quæstors*, to the great dissatisfaction of the soldiers."[9]

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[1] Rubino Untersuchungen, p. 325, finds a proof of the identity of the two kinds of quæstors in the statement in Dionysius x. 23, where T. Quinctius, whom Livy (vii. 25.) calls the prosecutor of Volscius, "led an army into the field to the support of the consul, in the same way as very frequently afterwards the quæstors appear as seconds in command to the general in chief." Granted that the narrative of Dionysius is not coloured by the writer's imagination, it yet proves nothing; for it does not appear why the quæstores parricidii could not be commanders of the army. However, in Dionysius, the quæstors appear already before the decemviri as real treasurers.

[2] Liv. iii. 31. [3] Liv. ii. 42. [4] Liv. iii. 23. [5] Liv. iii. 29.
[6] Liv. iv. 15. [7] Liv. iv. 53. [8] Liv. v. 19. [9] Liv. v. 26.

The first certain mention of the quæstores ærarii occurs in the year 445, where it is stated by Livy,[1] "all these measures were executed so quickly that the standards were brought out from the treasury by the quæstors, and carried into the field of Mars on that very day." Finally a direct testimony is found in Livy,[2] in the speech of Canuleius, which is distinguished by historical accuracy, shortly after the establishment of the quæstorship, where it is said, "there were no tribunes of the people, ædiles, or quæstors, and it was established that they should be created." With great chronological accuracy Canuleius first named the Pontifices and Augurs appointed by Numa, next the classes of Servius, then the consuls and dictators, and at last he names the tribunes of the people, ædiles, and quæstors. He can, therefore, not have had in his mind either the pretended introduction of the criminal judges under Tullus Hostilius, nor that of the treasurers under Publicola. Pomponius[3] names, just in the same way, in his chronological enumeration of public officers, first the tribunes of the people and ædiles, and says that *thereupon*, when the treasure had obtained greater importance, quæstors were elected who "were to have the charge of the public money."

The name of quæstor, which was common to both the different officers, affords certainly no

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[1] Liv. iii. 69. [2] Liv. iv. 44.

[3] Pompon. de orig. iuris, 22.

ground for considering them as identical, since the tribuni celerum, plebis, militum ærarii, and in like manner other officers, bearing a common name, were very distinct. I do not consider it settled that the name of the criminal judges was quæstor in the regal period. Perhaps they were at first called duumviri perduellionis. Quæstor signifies a public prosecutor. The name of quæstor parricidii was therefore very suitable for those who had to do with criminal jurisdiction, whilst quæstor ærarii was as suitable a title for an officer who had to exercise a control over the consuls so far as it concerned the ærarium. The name therefore is derived, in this case as in the first, from "conquirere maleficia," and not from "conquirere pecunias."

The erroneous opinion respecting the early existence of the treasury quæstors is connected with a generally spread error as to the importance of finances in that early time. What Böckh says[1] of Athens holds good for Rome. "For the maintenance of the state in times of peace *little or nothing* was required, and war was too small a matter to require an elaborate scheme of finance. The temples and priests were maintained from the lands belonging to them, from tithes and from sacrifices, the administration of justice from honorary presents for each verdict:" and again, page 38, "a tax assessed on a property census we can assume to have taken place in the Solonian classes

[1] Böckh. Staatshaush. der Athener, ii. p. 28.

only in *extremely rare cases* — its assessment was a secondary matter — the chief object was to fix the obligation of military service, the liturgies, and the distribution of political rights." We maintain the same of the Servian constitution. At its organisation the subject of taxing the people did not enter into consideration. When a war tax became necessary, which happened very rarely, then indeed it was no doubt assessed according to the census, since this offered itself as a suitable means. But, before the soldiers received regular pay, money was not the nerve of war, or even of material import in respect of it. A treasurer was in no case necessary in the old time; and when that office was established, it was not to superintend the levying of taxes but the suitable application of the spoil.

The result of our investigation is, that the quæstores parricidii were originally judicial functionaries; they were always chosen by the people and were and remained extraordinary commissioners; their duties underwent no change; but they were gradually superseded and fell into oblivion. The administration of the treasury was left at an earlier time to the kings, and then to the consuls; until after the overthrow of the decemviri a distinct office, that of the quæstores ærarii, was established, and the choice of the officers left to the people.[1]

[1] Becker Handb. d. Röm. Alt. ii. 32, has chiefly followed Rubino. I do not find myself, however, induced to give up my view.

The most important in the series of the Valerian laws is the lex de provocatione, which may be considered as the key-stone of the whole connected legislation. Valerius dispossessed himself therewith of the dictatorial power, and entered into the limits of the new republican magistrates. Until then he had appeared with the fasces and the axes in the city;[1] but now he lowered the fasces before the people, namely, the populus in the comitium,[2] whereby it was symbolically signified that he gave back again into the hands of the sovereign people the authority delegated to him. The connexion of this homage paid to the people with the law granting an appeal to the people is calculated to assist us in correcting a mistake, which has been very generally made in determining to what order of citizens, whether plebeians or patricians, the appeal lay. The ancients accustomed to look upon the patricians as a numerous nobility, firmly united for the enjoyment and the maintenance of their authority, could not hesitate in considering the plebeians as those who were favoured by the Valerian laws.[3] Partly these testimonies have led the moderns into error, and partly the knowledge that already under the kings the patricians had the right of appeal, so that it would have been superfluous for Valerius to enact a law, to

The Valerian laws enact the right of appeal to the people.

[1] Zonaras, vii. 13.

[2] Niebuhr, Röm. Gesch. vol. ii. page of note 1173.

[3] Dionys. vii. 41, 52; Liv. ii. 29.

give them this right now.[1] However the weakness of this last argument is palpable and hardly requires mention. As so many important laws in later times required renewing, can it excite surprise that under the government of the second Tarquin the right of appeal also was lost and now required to be again guaranteed by a legal enactment? But such strong reasons unite themselves with those already adduced in favour of the view that the law of appeal refers to the patricians alone, that we may venture here to set ourselves most decidedly against the testimonies of the ancients.

But this right of appeal was given to the patricians only, not to the plebeians.

We have to ask first, to what assembly of the people the appeal lay? Niebuhr who looks upon the right of appeal as granted to the plebeians, says, in full accordance with this view, that the comitia tributa decided upon appeals. But here arises the difficulty, that at the time of the Valerian laws the comitia tributa did not yet exist. There is at least not any foundation for the supposition that *before* the election of the tribunes as representatives of the *whole* plebs there existed general assemblies of *all* the tribes, however probable the existence of tribunes and assemblies of *single* tribes may be.

The Comitia of tribes did not yet exist.

If we turn next to the comitia of the centuries, we shall find that these also were little qualified

In the Centuriate Comitia the

[1] Becker, Handb. der Röm. Alterth. ii. 2, page 170, entertains the right view that the patricians and plebeians alike must be deemed subject to the dictatorial power.

to come to an impartial judgment in the matter of a plebeian. In modern times so much has been written and said upon the comitia of the centuries that we need say no more on this subject than is essential to the solution of our present question. We may at present consider as entirely set aside the error of Niebuhr, which makes the comitia of the centuries almost purely plebeian, and allots to the patricians only the six "suffragia" of the knights. A satisfactory refutation of this view has been given by Peter.[1] Still the result at which Peter arrives may be modified. He assumes, namely, that of the eighty centuries of the first class perhaps sixty were patrician, so that the other twenty centuries, and the four next classes, i. e. altogether one hundred and ten centuries, of the foot, consisted of plebeians. A foundation for this is suggested from the circumstance that in the cavalry the plebeians were twice as strong as the patricians (twelve centuries against the six suffragia). Without now investigating what was the numerical proportion of patricians and plebeians in the cavalry, we merely remark that, if this, as Peter assumes, was as 1 : 2, we must conclude, from the custom of a later time, that not the same proportion was observed in the infantry of the two classes. The Italian Socii at least, who stood in like relation to the Roman people as in an earlier time the plebeians to the patricians, furnished usually an equal number of

influence of the patricians was predominant.

[1] In his book entitled *Epochen der Röm. Verfassungsgeschichte.*

soldiers for the legion, that is foot soldiers; but double or treble as many cavalry as the Romans. Without, however, making use of this as an argument, we venture upon the conjecture that the whole first class of the Servian constitution consisted of patricians.[1] The difference in the number of votes belonging respectively to the first and second classes is so strikingly great, the first having eighty and the second only twenty votes, that from this alone we must be prepared to find a generic difference in the citizens constituting these two classes. To this may be added the remark, that classis and classici were originally the exclusive title of the citizens of the first class,[2] which dates from a period when the army, named classis, consisted only of patricians, those members of the populus, who alone enjoyed the full right of citizenship, and therefore took upon themselves the defence of the country. Although this exclusive military service of the patricians perhaps existed in all its completeness only immediately after the conquest of the country, and soon after the vanquished were drawn into the army as light troops, yet were these latter still neither

[1] Dionysius, x. 17, relates that the senate carried the election of Cincinnatus, who was hateful to the people, by the centuries of the knights and of the first class, whereby the votes of the four other classes were made unnecessary. This is one of Dionysius's calculations, which rests on no authority whatever, and which ought never to be used as historical proofs. Much therefore as this statement would seem to favour our view, we cannot make use of it in our argument.

[2] Gellius, vii. 13.

numbered in the army nor rewarded for their services by political rights (οὔτε ποτ' ἐν πολέμῳ ἐναρίθμιοι οὔτ' ἐνὶ βουλῇ); just as at a later period the Italian confederates, though performing military service, were not embodied in the Roman legions, nor rewarded by the franchise. What we know respecting the legislation of Servius Tullius is probably only the result of a rising of the people against Etruscan aristocratic oppression, in consequence of which the law acknowledged the plebeians as a constituent part of the army by the side of the patricians, and assigned to them certain political rights and duties, without, however, effacing all traces of that great difference which originally separated those two classes of citizens. The original purely patrician army we recognize accordingly in the forty centuries of the juniores of the first class, which made up exactly a legion of 4000 men.[1] By the side of these there were, in the four plebeian classes, likewise forty centuries of juniores. For it is highly probable that the fifth class at first contained only twenty centuries, in the same way as the second, third, and fourth classes, and was first increased to thirty when the necessities of war compelled the state to

[1] Polyb. iii. 107. "The legion consists of four thousand foot and two hundred horse; but when danger arises, the number of foot in every legion is increased to five thousand, and that of horse to three hundred." If these cases of necessity, of which Polybius speaks, had not been exceptions, it would have been necessary to raise the numbers of centuries in the first class from eighty to one hundred.

draw more largely for recruits upon this most numerous of all classes. The smallest sum fixed in the original census was 25,000 asses, i. e. the census of the fourth class. The fifth class consisted of all who had less, just as in Athens the census of the Thetes was limited only in one direction by the minimum of the census of the Zeugites. The last class of citizens was in neither case separated by any property qualification from the very poorest. It comprised all who had less property than was required for the next class above them. But when the centuries of the fifth class were increased to thirty, and it was thought advisable to exclude the poorest of all from the service, a minimum census was fixed for the citizens of this class, which could be diminished as necessity required. Hence are explained the different statements in our sources respecting the smallest amount of the census.

Thus, therefore, we have originally, on the one side the eighty patrician centuries, and on the other eighty plebeian. In the earliest time in which, according to all tradition, the strength of the legion did not exceed 3000 men, there were most probably only sixty centuries of the "classis;" of which we can, however, show no traces, since our information respecting the number of the comitia of the centuries dates from a considerably later time of the republic—a consideration which alone should restrain us from enquiring into the minute details of the comitia, as if we possessed really authentic fragments of the commentaries of Ser-

vius Tullius. We must therefore be satisfied with understanding the general character and the political object of the centuries; and, whatever may be thought of the conjecture respecting the eighty patrician centuries, so much is certain, and is shown particularly by Peter's investigation, that the patricians certainly preponderated in these comitia, and that they were little suited therefore to be an appellate court of justice, where the plebeians were to be enabled to find that justice which the patrician magistrates refused them. It may be said, indeed, that the comitia of the centuries were as capable for the decision of plebeian appeals as for the choice of plebeian tribunes, which Niebuhr has ascribed to them down to the time of the Publilian law (471). Nor is this conclusion faulty. The one supposition stands and falls with the other. But we shall show, by and by, that Niebuhr's theory respecting the election of tribunes by the comitia centuriata is not tenable.

The curiata comitia were exclusively patrician.

There remain therefore only the comitia of the curies, which, as we saw, passed the Valerian law, and without doubt had also to decide in appeals. That in these comitia the appeal of a plebeian would have been a mere farce is easy to be understood.[1] The plebeians therefore were

[1] Walter (Römische Rechtsgesch. p. 51) pretends to have found a law whereby the Provocation was transferred from the comitia of the curies to the comitia of the tribes, and he quotes Zonaras, vii. 17, Lydus, i. 44. All that is said in Zonaras is, that the Publilian law of 471 gave the provocation to the plebeians.

not in possession of the right of appeal before the time of the decemvirs; nor does the history of this period exhibit a single example by which such a right of the plebs is apparent. So far from it, there are proofs to the contrary; and one is the well known account of Livy[1] respecting Volero Publilius, in which, curiously enough, our opponents have pretended to find a confirmation of their views.

An incident showing that the plebeians had no right of appeal before the time of the decemvirs.

Volero refuses to serve as common soldier, and applies for protection to the tribunes (appellat tribunos). As these do not listen to him, he throws himself upon the people (provoco ad populum et fidem plebis imploro). That this indeed was only a cry of despair to excite the compassion and support of the people, and not a legal proceeding, appears from the result;[2] for "the more vehemently he shouted, the more violently the lictor tried to tear off his clothes and strip him." This drove Volero to madness. He pushed the lictor aside and exclaimed, "I appeal and implore the protection of the plebs: support me, citizens!

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[1] Liv. ii. 55.

[2] And by a similar exclamation of Virginia's nurse (Liv. iii. 44), "ad clamorem nutricis, fidem Quiritium implorantis." Nobody can imagine that this can refer to a legal appeal; for the decemvirs were unfettered by any such restraint on their power. Compare also Livy iii. 45, where Icilius says to Appius: Non si tribunicium auxilium et provocationem plebi Romanæ, duas arces libertatis tuendæ ademistis, ideo in liberos quoque nostros coniugesque regnum vestræ libidini datum est. And further: Ego præsentium Quiritium pro sponsa, Virginius militum pro unica filia, omnes deorum hominumque *implorabimus fidem.*

support me, fellow soldiers! there is no use in waiting for the tribunes." Then they were coming to blows; and it appeared that *nothing would be respected of public or private right.* The consuls complained "*of their ill treatment, the violence of the plebs, and the audacity of Volero.*" How could the consuls complain of violation of the law if Volero had only exercised a right that belonged to him constitutionally. Why did not Volero indict them in the following year, when he was tribune, for having violated the sacred law of appeal? It is much to be wondered at, that Livy, with his view of a right of appeal belonging to the plebs, should have preserved so many traits in this narration which demonstrate the contrary.

Argument drawn from the law of Duilius.

We have said, that until the decemvirate the plebs did not possess the right of appeal. This we consider proved by the law of the tribune Duilius, carried immediately after the overthrow of the decemvirs, which according to our view first extended this right to the plebs. This law was moved by the tribune immediately after the passing of a law of the same nature, which the consuls Valerius and Horatius had proposed and carried in the comitia centuriata, and which restored the old right of appeal.[1] Niebuhr is surprised at this proceeding, viz., the proposing of the same law, in the same year, by two different authorities; and it would be surprising indeed if

[1] Liv. iii. 55.

the old Valerian law of Publicola, which had first established the right of appeal, had conferred it on the patricians and plebeians alike. It was this law that the consuls Valerius and Horatius now renewed; and it would have been absurd if the tribune Duilius had proposed the same law after the consuls had carried it. But the truth is, that the law of Publicola did *not* include the plebs, that it was now renewed without alteration, and that the law of Duilius, *for the first time*, placed the plebs on the same footing with the patricians regarding the right of appeal.[1]

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[1] It is a question not yet settled, whether the law of appeal was valid against the dictator. Festus states this of a later time, s. v. "Optima Lex." He says, "since, however, the right of appeal from this magistrate to the people, which did not at first exist, was given, the phrase is no longer added, 'ut optima lege,' the prerogative of the former magistrates being impaired." Müller (ad Fest.) and Peter (Epoch. p. 39) think that the Horatian Valerian laws, after the decemvirate, introduced this diminution of the power of the dictatorship. Becker has, on the other hand, adduced sufficient reasons (Handbuch. d. Alter. ii. 2. s. 168) to the contrary; but he leaves the question undecided, as Niebuhr likewise has done. I think there is no reason to reject the statement of Festus; but it does not refer to the dictator, "rei gerundæ causa," whose power would never be diminished, but to the other dictators, for example, "clavi figendi," or "comitiorum habendorum." These were not "dictatores optima lege." The inducement for the leaving out of this clause ("ut optima lege") is found (if not earlier) in Livy, vii. 3, where Manlius, the dictator clavi figendi, raised troops, as if he would take upon himself the full powers of the dictator. Here it is said that "at length all the tribunes of the people united against him, and, overcome by force or shame, he abdicated the dictatorship" (compare ib. 4). The limitation of the power of the

We are now enabled to make an application of the knowledge of the circumstance, that the greater part of the plebs, at the very beginning of the republic, stood in the relation of clients to the patricians; and we hope a confirmation will be found for both in the perfect agreement of our view of the clientship with that of the Valerian laws.

The tribunes appointed by law the patrons of the plebs.

It is well known that the patron was esteemed the legal representative of his client. In disputes between themselves, however, there was no earthly judge; the culpable party was amenable only to the punishment of the gods. Now any one who has a childish belief in the moral purity of the good old times may suppose that in such an arrangement there was sufficient protection for the weak. But we have already expressed our doubt as to this, and repeat here that the oppressed plebeians are in reality no others but the clients. Now how can we imagine it possible that a single one of these clients, who had not even the right in his own person to come before a judge, should have been entitled to call an assembly of the people, and there to come forward as complainant, perhaps against his own patron, after a patrician magistrate had decided against him? The improbability of such a proceeding is too palpable to require farther proof. Spectacles

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dictator was particularly useful, as the patricians sought by means of a dictator to evade the Licinian laws, by causing the election of two patrician consuls (Liv. vii. 17, ff.).

would be as great a boon for a blind man as the right of appeal given to plebeians so long as they were clients. Before he could enjoy any such right, the client required a *real* patron, a legal protector, whose assistance he might solicit in every case, whether his patrician so called protector, left him undefended, or even himself acted the oppressor. These *true legal* patrons the plebs obtained in the tribunes of the people, who henceforward were the mediators between the clients and the populus, and thus began to unloose the bonds of the old clientship.

The original judicial functions of the tribunes are not yet sufficiently elucidated.[1] Before the secession they had been only plebeian arbitrators between plebeians, but now they obtained a public dignity and sacredness in opposition to the patricians, and the capability of taking appeals from the plebeians, and of appearing as their patrons in the courts of justice.[2] Their intercession was grounded upon this right of representing plebeians before the magistrates. They were entitled to demand that, before any magis-

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[1] Walter, Röm. Rechtsgesch. p. 49.

[2] As, for example, the English consuls in Turkey have the right to appear in court for every countryman of theirs. Without hearing them no Turkish judge can pronounce sentence against an English subject. The Russian serfs are placed under the protection of a government officer, whose duty it is to prevent injustice and oppression on the part of the lords. Similar laws were introduced into Austria by Joseph II. In Hungary, however, it was not till 1835 that commoners were entitled to conduct their law suits in their own names.

trate enforced his imperium against a plebeian, they should first be heard in his behalf.[1] There are found still later traces of their peculiar functions, as legal representatives of persons who could not appear in court or perform any legal transaction in their own names.[2] In respect of the manumitted Hispala, Livy relates:[3] — "That, after applying (inasmuch as, her patron having died, she appertained to no one) to the tribunes and prætor for a guardian, she,

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[1] Their frequent opposition during the conscription of recruits is explained in this way: it was not summary or general, nor did it supply a constitutional veto of the tributa comitia against a declaration of war by the comitia of the centuries. The tribunes took only individuals under their protection who were called illegally into active service, as, for example, if a man was emeritus, or otherwise causarius, or merely on the ground of equity. Comp. Liv. xxxiv. 56: "When numerous soldiers who were in the city legions applied to the tribunes of the plebs, to take cognisance of the causes why parties should be excused from service who had been discharged, or were sick," &c. &c. Liv. iv. 53: "When M. Maenius, the tribune of the plebs, opposed Valerius, the consul, making the levy, through the aid of the tribunes, no one took the military oath against his will," &c. Liv. iii. 11: "Whomsoever the lictor took by order of the consul, the tribune ordered to be set at liberty; nor did the particular right of the individual make the limit; but whatever you might aim at was to be got by the confidence of force, and by the strong hand." Greatly overstrained, on the other hand, is the narrative in Livy, iii. 22: "It was with difficulty obtained from the tribunes, that they would suffer the war to be first attended to." Also Liv. iii. 25 & 30: The tribunes could only obstruct the conscription, not prevent it, as seen in Livy, vi. 36: "After great contention the army was raised." Compare Becker, Handbuch der Röm. Alt. vol. ii. 2. p. 273.

[2] Compare Gellius iv. 14. [3] Liv. xxxix. 9.

upon making her will, made Æbutius her sole heir." Ulpian refers to this custom.[1] The application was made probably *through* the tribunes to the prætor. Thus it was that the tribuneship was destined at first to serve the plebeians as a compensation for the want of the right of appeal, and generally for the almost total absence of all political rights: and it is certainly idle to seek to account for the establishment of the office of tribune by saying that they were to back and support, by their authority and inviolability, the appeal of a plebeian.[2] The mere assumption that, without such support of the tribunes of the people, the appeal of the plebeians would have been without result, amounts to an admission that the plebs, in the time of Publicola, was not fit to receive the right in question, and did not obtain it.[3]

The tribunes elected neither in Curiate nor Centu-

Respecting the mode of electing the tribunes of the people in the earlier time of their existence, great errors have been made, which prevent the

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[1] Ulpian, xi. s. 18. The Atilian law provides that guardians be given, by the prætor and the majority of the tribunes of the plebs, to those women and minors who have none, which guardians we call Atilian guardians.

[2] Peter Epochen, Ch. ii. § 5., holds this view.

[3] It is well known that under a dictator the tribunes alone, of all the public functionaries, remained in office, although the right of appeal to the people was suspended. What then was the use of the tribunes? What appeal of a plebeian were they then to have supported when such appeals were illegal? But the intercession of the tribunes was in a somewhat different condition. This continued under the dictator as well as under the de-

true understanding of this magistracy and its early history. Niebuhr has shown how untenable are the statements of Dionysius and Cicero,[1] that the choice of the representatives of the people took place in the comitia of the curies. This would be making the wolf your sheep-dog. The patricians could never choose the protectors of the plebs. Niebuhr, therefore, conceives the statement of Dionysius to arise from a misunderstanding, from which all that can be inferred is that the comitia of the curies had the right of sanctioning the choice of tribunes, but not that of selecting them. The election itself, says Niebuhr, belonged to the centuries, and was by the Publilian law, twenty years later, transferred to the comitia of the tribes. This view is in tolerable accordance with the whole of Niebuhr's system, according to which the comitia of the centuries were in reality almost purely plebeian, as only six centuries of the knights are considered by him to be patrician. How this view of the composition of these comitia can be questioned, as it has been done by Peter, how the overwhelming influence of the patricians in the same can be acknowledged, and yet Niebuhr's view of the choice of the tribunes of the people can be left

riate Comitia, but by the tribes.

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cemvirs. See Liv. iii. 36: "For besides that the people could afford no protection, the right of appeal being done away with; the decemvirs also had abolished the *intercession* by an agreement among themselves, whilst the former decemvirs had allowed their decrees to be corrected by appeals to a colleague." Comp. Becker, Handb. ii. 2, p. 170.

[1] Dionys. vi. 89, ix. 4. Cicero p. Corn. p. 451.

untouched, is difficult to be understood. But, besides the patrician character of the comitia of the centuries, there are still other impediments against the possibility of the choice of the tribunes in the same. The office of tribune was exclusively civilian, and had no connexion with the army or with war; but the comitia of the centuries were the assembled army, and had particularly in the olden time that character alone; in conformity wherewith they only chose the military commanders. A conjecture has been put forward by the ancients, that the five tribunes were respectively elected in the five classes. This view is quite untenable; for, granted even that the number of the tribunes of the people, from the very beginning, was five, which is not yet very certain, still their democratic character, which placed them all on a footing of equality with one another, agreed very ill with the timocratic character of the five classes of the centuries. If the classes, as such, ever chose representatives, the number of such representatives must have been in proportion to the number of votes of each class, so that the first class, consisting of eighty centuries, should have chosen four times as many as the second, which numbered no more than twenty centuries.[1] This

[1] Becker, Handb. der Röm. Alt. ii. 2, s. 256, says that this choice of tribunes in the comitia of the centuries seems very probable, "if we could but explain how an election could have been possible by means of a single class." He adds, in a note, very justly, that an officer elected of one class could only have been the representation of this class, and not of the whole plebs.

view of the choice of the tribunes is therefore to be rejected: and still more groundless is that which Göttling[1] proposes to substitute, namely, that the tribunes of the people, until the passing of the Publilian law, were chosen by co-optation. But this is only a shot made at random, and requires no refutation. Now the erroneous theory of the ancients, which speaks of a choice of the tribunes of the people in the comitia of the centuries, I explain from a confusion of the old patrician tribunes[2] with those of the plebs.[3] The old tribunes of the Ramnes Tities and Luceres were without doubt chosen in these comitia. They ought properly to be termed tribunes of the populus, in opposition to the tribunes of the plebs. Still I doubt whether they ever were so named, as they were older than the other tribunes, and therefore required not to be distinguished from them. We find here, therefore, a similar mistake as before, when we found that the tribune of the people, Brutus, was no other than the tribunus (Celerum) Junius Brutus, who appears in Dionysius in the narrative of the secession of the plebs to be erroneously looked upon as a tribune of the people, and most improperly introduced by Dionysius into the narrative of the rising of the commons. Now,

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[1] Röm. Staatsverf. § 103, p. 289.

[2] Dion. ii. 7. Göttling Röm. Staatsv. § 36, p. 58.

[3] In Dionys. iii. extr., it is stated that the king is chosen in the comitia of the tribes. This is the same fault: only that in this case the electors not the elected, are mistaken, viz. the three tribes of the patricians are represented as those of the plebeians.

as certainly as plebeian tribunes existed since the existence of the plebeian tribes, and were naturally chosen by the members of the tribes, and as certainly as, during the secession, the plebs confided the conducting of their affairs to two or five of their tribunes, or chose new ones for this purpose,[1] so positively must it be asserted that the plebs never let the choice of these their representatives out of their hands; and as an additional proof for this theory we may adduce the fact, that among the very first tribunes there were men so hostile to the aristocracy that we cannot imagine how they could have been elected in any but a democratic assembly, or how they could have been in any way subject to a consenting vote of the patricians.

The so-called Publilian laws do not militate against this view.

But to this theory stands opposed the account of the Publilian law, according to which, more than twenty years after the original establishment of the tribunes, the election of these officers passed over to the Comitia Tributa. If this account be correct, then the choice before the time in question must have taken place in another assembly, and our entire argumentation falls to the ground. However an exact investigation of the Publilian law will have the very opposite effect, namely, that of supplying a new proof for our theory, viz. that from the very first the plebs chose their tribunes in their own assemblies. We shall see,

[1] This was done in sacro monte; compare Liv. ii. 33, iii. 54. Pompon. de Orig. Iuris, 22.

namely, that the narrative of the events which accompanied this law is not the representation of a real object, but, like many others in the old Roman annals, a deceitful reflexion, a faint image of that which had existed previously, and wherewith the poverty of historic writing was forced to fill the dry annals of those days.[1] The circumstances accompanying the passing of the Publilian law are related by Livy as follows:[2]— An old centurion, Publius Volero, refused in a levy to serve as a private soldier, and carried his point with the help of the mass of the plebeians. He was in the next year chosen tribune of the people, and proposed the law that the plebeian magistrates should be chosen in the comitia of the tribes. In the next year Laetorius, also an old soldier, was elected tribune, became the chief champion of the plebs, and carried his point in opposition to Appius Claudius, the consul, although not without violence and hot contests. It is impossible not to recognise in this story a great resemblance with the first secession. The centurion Volero reminds us of the ill-treated soldier[3] who roused the plebs to insurrection. The difference is, that in the former instance the soldier in question is represented as an ill-treated debtor,

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[1] It would be a very tedious task to trace all the repetitions of this kind, which are very numerous in the early annals. We will content ourselves by adducing one striking example. The conspiracy in favour of the Tarquins is related by Dionysius not less than three times, viz., v. 6, v. 50, and v. 53

[2] Liv. ii. 55. foll. Dio. ix. 41. foll. [3] Liv. ii. 23.

whilst Volero is called upon to serve as a common soldier, and refuses to do this. In this respect the former tradition shows itself more correct, and therefore appears decidedly older; for when Volero refused military service there was no war.[1] Besides, the narrative in Livy has[2] no suitable termination; it is said that Claudius, "overcome by the agreement of the senate, desisted from further opposition, and the law was quietly carried."

In the first secession, and also in the present contest, the chief leader on the patrician side is an Appius Claudius, and on the part of the plebs a Laetorius. This challenges closer examination. The Fasti had for the year 471 an Appius Claudius as consul. The annalists of the house knew nothing about him, and helped themselves in the usual way, by borrowing facts from earlier and later Claudii, and attributing them to this one, a mode of proceeding which was greatly facilitated by the existence of several differing traditions respecting the same event. Now, as the legend of the dictatorship of Cincinnatus is half derived from the war of the Æqui (465),[3] and half from the war against the Volscians and the plebeians of Ardea,[4] so is the history of this Claudius jumbled

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[1] Compare the narrative of Dionysius ix. 39. Livy is careless enough to preface the narrative of Volero's agitation, by saying (ii. 54) that peace abroad was directly followed by civil discord. How could Volero refuse military service when there was "peace abroad?"

[2] Liv. ii. 57. [3] Liv. iii. 4, sqq. [4] Liv. iv. 9.

together from a tradition touching the secession of the plebs, and partly from that of the decemvir Appius. Our Appius and the decemvir both commit suicide in order to avoid the judgment of the people. Niebuhr[1] has remarked the striking fact of this repetition of a kind of death so rare in Rome, and maintains, with justice, that the narration of the decemvir has erroneously been transferred[2] to the Appius of 471, who, although apparently considered by Livy to be the father of the decemvir, generally appears to be the same person. Now what Appius did in opposition to the tribunes of the people is in a similar way derived from an earlier time, and from an earlier Appius, viz., his opposition against the moderate party in the senate, particularly the moderate colleague—his unmanageable arrogance and his love of strife. His chief opponent in the plebs is Laetorius; this man appears already in the year 495, shortly before the secession, in a somewhat dark passage of Livy,[3] where he is related to have been chosen by the people, in order to institute a guild of traders—to dedicate a temple to Mercury, and to superintend the trade in corn. These functions evidently belong to a plebeian officer, and in fact to the Ædiles, though Livy

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[1] Röm. Gesch. ii. note 754.

[2] We may add, that also the names of the two tribunes who accuse Appius in 471, viz., M. Duilius and C. Licinius, are derived from the well known tribunes in the time of the decemvirs, who bore the same names.

[3] Liv. ii. 27.

does not seem to have seen it. The M. Laetorius, a centurion of the first rank,[1] who was chosen to his place *by the people*, and *in the presence* of the pontifex (pro pontifice) performed the sacred rites is none other than the Laetorius, who appears again[2] at the later period, "whose vast renown in war made him insolent, there being no one of that age readier at violence." It is evident, then, that the whole narrative of the contest between Laetorius and Claudius, in the year 471, is to be separated from the history of that year and the Publilian law, and is to be considered as a second version of the introduction of the first plebeian magistracy.[3] But the so-called Publilian law is nothing more than an anticipation of the law of the dictator Publilius, which is shown particularly in Dionysius and Zonaras,[4] who pretend that as early as 471, by the Publilian laws, the comitia of the tribes were rendered competent for general legislation, which in fact was first enacted by the lex Publilia of the year 339. The other clause contained in the so-called Publilian rogation of 471, "that plebeian magistrates should be elected in the comitia of the tribes," we refer to the year 495, and explain it as a stipulation of the

There is no historical foundation for the Publilian laws, ascribed to the year 471.

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[1] Liv. ii. 27. [2] Liv. ii. 56.

[3] If we compare, particularly, Livy ii. 27, extr. with ii. 55, we shall see that the second narrative is only a fanciful version of the first. In both the appeal of a plebeian is spoken of quite improperly.—It is generally assumed that the patricians were excluded from the Comitia tributa by the Publilian laws. Livy's narrative favours this opinion; but, according to Dionys. vii. 15, they were excluded since the great secession.

[4] Dionys. ix. 43. Zonaras, vii. 17.

representatives of the plebs, that henceforth the tribes should be constituted as a united assembly of the people, and choose officers whose authority, valid also against the patricians, should be acknowledged by the whole community. From the expressions in Livy,[1] we may conjecture that the first plebeian magistrates whom the patricians acknowledged were the ædiles, and that one of these, the Volero in question, gave the impulse to a farther extension of plebeian liberty, by proposing the election of the tribunes, and carrying it with the assistance of the seceding plebs. In this way is the Publilian law of 471 quite removed from the Roman history, and, from an objection to our assertion, is converted into a proof that the tribunes of the people were chosen from the beginning in the tribes.[2]

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[1] Liv. ii. 27.

[2] A new view has been lately propounded by Becker respecting the original mode of electing the tribunes of the people (Handb. der Röm. Alterth. ii. 2, p. 256), namely, that at first the election took place in the Comitia Calata, under the direction of the Pontifex. He founds his theory upon this, that, at the revival of the tribunician power, after the overthrow of the decemvirs, the Pontifex Maximus held the electoral comitia. (Livy iii. 34.) He supposes that the same occurred at the first establishment of the tribunes. And indeed there appear traces of a co-operation on the part of the Pontifex in Livy, ii. 27. But, if this co-operation is looked upon by the ancients and by Becker as a presidency at the election, we must decidedly dissent. The Pontifex could only perform the religious ceremony, whereby the tribunes were declared to be sacrosancti. This, then, may have been done in the Comitia Calata, on the Capitol, before the Curia Calabra; but the election itself must, during the secession, have taken place on the Sacred Hill, where, amongst the seceding plebs, neither comitia curiata calata, nor centuriata (if such

The extent of the political rights of the plebs before the decemvirate has been much overrated.

Thus much, therefore, the commonalty gained by the secession, that it could choose its own chiefs, that these obtained important rights for the protection of the plebeians against oppression and injustice, and that under their presidency the formerly isolated tribes were united in a general assembly of the tribes, which gained a strong, and soon a threatening and commanding, position against the patrician curiæ and the senate. There was thus effected the commencement of obtaining the full franchise, but still the commencement only. Those portions of this right which are not the object but the means were with good tact first sought and gained by the commonalty. The right of electing and of being elected to the honorary public offices of the republic they now possessed in part, with the prospect of extending it yearly, and of making it more influential. The next thing they obtained was the connubium: the last and most important, the commercium.[1] Still it

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really ever existed) could be formed. On the whole, this much seems quite certain, that in the comitia calata acts only were performed in which the people were passive, such as the publication of the calendar, the inauguration of priests, publication of wills, and the like. We must, therefore, declare against a theory which transfers the beginning of the democratic constitution to the particular care and protection of a college of priests which represented in the most stringent manner, and defended most obstinately, the aristocracy of the patricians.

[1] Commercium was not only the right to buy and to sell, but also freedom of property and labour from all oppression and those taxes which were not imposed equally on all members of the state.

cost a long strife and indefatigable efforts before all this was won. The first half century of the republic found the plebs in as pitiable a position as that in which the state was as a whole. Without clearly understanding the position of the two parties, it is impossible to follow the farther development of the constitution. But the great error, of pitching the constitutional position of the plebs at this period too high, is general. Not only has it been maintained, that it was to the commonalty, the plebeians, that the Valerian laws granted the right of appeal, but all the vague statements were implicitly credited which spoke of general divisions of land to the plebs from the kingly domain; which must have been larger than the whole territory of Rome to afford to every plebeian seven jugera. Then an admission of plebeians into the senate was believed; though Niebuhr[1] himself says that in the Servian constitution, which must have been much more popular than the first republican one, "no trace indicates that the patricians did not exclusively form the senate."[2] Nay, as if this were not yet enough, the first consul, Brutus, is made a plebeian. Several traces, though slight, indicate the greatness of this error; as when, for example, a favour proportionately so small as the legal

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[1] Röm. Gesch. vol. i. p. of note 1095.

[2] "It has escaped Niebuhr, that Zonaras (vii. 9) has preserved a statement that Servius admitted plebeians into the senate. The same also is said by Servius ad Æn. i. 426.

limitations of judicial fines was first granted to the plebeians, shortly before the decemvirate, by the Aternian Tarpeian law, whilst the patricians had already obtained it under Valerius Publicola.[1] But a full proof lies in a more exact explanation of the commercium at the period in question, and to which we will now advert.

Real cause of the distress of the plebeians and their constant debts.

One of the most striking phenomena in the Roman History, a real stumbling-block at once for him who takes Livy in hand for the first time, is the unceasing indebtedness of the plebeians, and the equally inexplicable and revolting usury of the patricians. One is puzzled whereat to be the most surprised, whether at the everlasting anxiety of the one party to borrow, or at the capability and inclination of the other to lend. It is a recognized fact that in general debts arise from borrowing money for speculation, and only very insignificant ones from misfortune or want of economy. But then we have to think of ancient Rome, and in fact with the greatest justice, as an almost purely agricultural state. We know that laws prevented the Roman burgher from trade and commerce—laws which, though referred inconsiderately to the Roman people in general, were certainly true of the old patrician

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These statements, however, are entirely worthless, as is at once apparent. Niebuhr has, almost against his will, been forced into the admission of the proposition, "that it is false that already under the first consuls plebeians came into the senate." Röm. Gesch. vol. i. p. of note 1164.

[1] Niebuhr, Röm. Gesch. vol. ii. page of note 521 & 690.

families.[1] Our astonishment increases when we see in the debtors and creditors continually the two parties, the plebeians and patricians, opposed to each other in such a manner that a patrician debtor and a plebeian creditor appear as something quite unimaginable; and yet, as if still more to increase our embarrassment, we know that in the later historical times the plebeian knights were the chief usurers, the patricians, on the other hand, held themselves aloof from dealings in money. But in the old time it is the patricians as a body who oppose the introduction of a moderate rate of interest, and whose houses are prisons for plebeian debtors. For the plebeians, on the contrary, it is said, a new liberty began with the doing away with the nexus for debt.[2] It were useless to multiply examples, which in the reading of each of our authorities offer themselves plentifully enough, just as so many enigmas. The solution of this difficulty, which Niebuhr has proposed, does not suffice.

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[1] Such regulations speak only of the burghers *par excellence*, that is, the populus; and later authorities extend these erroneously to the whole population. An example is seen in the following:—The nundines were market and comitia days for the plebs, but for the patricians they were nefasti. This (Niebuhr, ii. N. 482) is stated by Festus and Pliny in terms which show that they took no notice of the plebeians, and predicated of the whole people what is valid only in respect of the patricians, namely, that they were dies nefasti. That trade and commerce were not forbidden to every Roman citizen is shown sufficiently by Becker, Handb. der Röm. Alterth. ii. 1. 189.

[2] Compare Nieb. Röm. Gesch. vol. i. page to note 1624; vol. ii. pp. to note 1326, 1318, and 648.

He is justly surprised to find that, immediately after the burning of the city by the Gauls, whereby patricians and plebeians must have suffered equally in proportion, the former should have been able to lend money to the latter. How they could bring their waggons full of heavy copper into safety, and whither, it is not easy to see. Niebuhr, therefore, calls to his aid a conjecture, with which, however, he himself seems only half pleased: that the real usurers were foreign money dealers, who carried on their trade in Rome on account of the patricians. We shall refute this conjecture by simply stating the true solution, not only of this but of all difficulties connected with this matter. The constant historical connexion of agrarian laws with laws of debt shows that we must consider the two in connexion with one another. The fact is this: that *the debts of the plebeians did not arise out of direct loans by the patricians, but from yearly ground rents, to which as clients they were bound to their patrons.*

The debts of the plebeians arose not from a practice of borrowing money, but from their obligations as clients to pay ground rents.

The peculiar nature of landed tenure is, with different peoples, as varied as the legal relation between the two chief classes of the population, which one may denominate, in the different steps of their development, the ruling and the subject population—the owners of capital and the labourers. Although this possible variety in general renders difficult the investigation of the detail of this relationship in *one* determinate case, where the sources are not existing in great abundance

General features of the tenure of land among different nations.

and preciseness, yet, particularly in times of simple manners and modes of life, a certain uniformity pervades the principal traits of the relationship in question, whereby, with the help only of slight traces, we are enabled to discern generally what was the law of the tenure of land.

The ruling population which has come by conquest into possession of a territory lays claim to the property in the land. The conquered owe their lives, and the partial preservation of their possessions of land, not less to the policy than to the magnanimity of their conquerors, who, unless they themselves prefer to put their hand to the plough, must retain labourers for the purposes of agriculture. For such moderation, and for the protection of their lives (for the warlike conquerors take the defence of the land upon themselves), the conquered pay tribute to their lords. So far every thing is subject to and regulated by a general law. But now arises the question as to the particular mode and manner, which, as we said, admits of great variety. It may be, that the subjects are tributary to the conquering State as a whole, as a province to the ruling empire, or they are grouped as subjects round individual members of it. The first takes place when the conquering state, at the time of the conquest, has an artificial organisation, regulated administration of the finances, or skilled officials, and a powerful unity, as the Roman State at the time of the conquest of Sicily. The absence of such conditions, on the contrary, makes the

Difference arising from the progress of civilisation and centralization.

other system almost unavoidably necessary, viz., that the individual members of the state who supply the wanting administration in the small circle of their subordinates as judges and chiefs, and so become the holders of seignorial rights and offices of the state, take as a compensation for themselves, the profits from the conquered land, and thus share the property of the state.[1] Hence is formed an hereditary right of the members of the state to particular portions of the land, and those dwelling therein, who now enter into a relation of constitutional dependency on their particular lords, which appears under different names in the first periods of almost every agricultural and warlike people. This relationship is found exactly as here indicated amongst the ancient Germans.[2] The serfs had their own houses, and paid their lords fixed portions from the produce of their land and cattle. The same relationship is found in Attica, where

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[1] If there ever was a state inclined to relinquish the direct administration through officials, and to transfer them to certain classes of private citizens, that state was the Roman. The imperfection of the system of finance in the time of the kings and of the earlier republic is shown in the custom of charging the aes hordearium on the taxed widows and orphans. Even after the introduction of military pay, the charging private persons of a certain census, the tribuni ærarii, with paying the soldiers, was preferred to committing this to appointed officials. The levying of tenths through farmers of the revenue is characteristic of the same tendency of the Roman state.

[2] Tacitus, Germ. 25.

the peasants (Teleontes, Thetes) paid the sixth part of the produce to their lords, not to the state directly.[1] With the austere Spartans this relationship assumed a harsher form. The Helots were not immediately subjected to the state, but each individually to a Spartan lord, to whom he paid contribution. The Thessalian Penestes was in a similar position. Let not any one be alarmed at my comparing the "*honourable* Roman plebs" with helots! In the beginning both were alike; and the helots would have become plebeians, and the Spartan state would have become a Rome, if the Lycurgan legislation, instead of establishing a system of selfish exclusion and of unjust oppression, had aimed at the gradual loosening of the client-bond, and the education and admission of helots to the Spartan citizenship.

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[1] Dionys. ii. 9. Boeckh. Staatshaushalt. der Athener, vol. i. p. 319, and vol. ii. p. 28. Plutarch, Solon. c. 13, says:— "In fact the whole of the commonalty were indebted to the rich: for they either cultivated the land, paying to them a sixth of the produce, being called Hectemorii and Thetes, or else, making their persons responsible for their debts, they were liable to become slaves to their creditors." A connexion very clearly shows itself here between indebtedness and agrarian dependence, between obæratum esse and clientem esse, of which we shall speak hereafter. We may also compare Cæsar Bell. Gall. i. 4: "Orgetorix brought to his trial all his clan (familiam), numbering about ten thousand people, and all his *clients* and *debtors* (clientes obæratosque suos), of whom he had a great number." And Plutarch Romul. c. 9: "Having opened an asylum to deserters, they received every body, surrendering neither slaves to their masters nor serfs to their creditors (*οὔτε θῆτα χρήσταις*)."

Various degrees of property in land.

But along with the possession of land, in the produce of which the members of the ruling people as *such members*, in their political capacity, have a right, there often exists another immediate possession of land, which bears the character of private property. The Roman patricians held such private property: and indeed it appears from Plutarch,[1] that the original normal amount was 25 jugera,[2] whilst a client obtained two jugera for cultivation. This is the proportion in which land was assigned to Attus Clausus and his clients. An example of the two-fold nature of the possession of land is afforded by the Roman kings. Besides their domains they had also private property. The domains which were cultivated "without the king being required to trouble himself about it"[3] belonged to them in their constitutional quality: their property was different therefrom, and of a private nature. This division we learn from Dionysius,[4] when he relates of Tullus Hostilius, that he divided amongst the people the state domain, but kept his private property for himself. What is thus established with respect to the kings applies on a smaller scale to all the patricians. Just as the state land of the kings, so also the state land that the patricians held in their hands was cultivated for them without their own trouble or labour: that is, the

[1] Poplicola, 21.

[2] Niebuhr limits such private property of patricians once for all to two jugera.

[3] Cicero, Rep. v. 2.

[4] Dion. iii. 1.

clients who possessed it paid to their chiefs a certain part of the produce.[1]

The usual supposition is, that the state land, the Ager Publicus, came through occupation into the hands of the patricians; but how this occupation was possible we ask in vain. A general seizure could only produce contention and strife. Nor can we understand how such proceedings could have been tolerated. There is a statement in Appian,[2] that the state had not leisure, after every conquest, to divide the waste land, and it was granted to him who wished to cultivate it. This statement is entirely false, if understood literally and supposed to apply generally, or to the effect that no land had become ager publicus that had not lain waste, and that therefore all ager publicus came into the possession of individuals through mere seizing of it. Certainly we may concede that for really waste land the State cared little, as few would compete for it; it waited until one portion after another was cultivated, and then surrendered it to the occupiers. But that the state retained for itself waste land only, is as improbable as that, on the other hand, good

The "Occupation" of the ager publicus.

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[1] From the collection of this rent they were very properly named Proci, that is, demanders. According to Festus, s. v. Procum, they were called proci patricii in the charter of Servius Tullius. Festus says that *procare* is equivalent to *poscere*, and that procax is derived from it (Paull. Diaconus s. v. procare); he thinks the patricians were called *proci* from *poscere in matrimonium*.

[2] Civil. i. 7.

arable land was given up to voluntary occupation. An irregular occupation, which does indeed apply to a portion of the conquered land, namely, to that which lay waste, has been erroneously transferred to the whole of the state land, to which it never could apply for the reasons just stated; and it has been overlooked, that the Latifundia, which called forth the Gracchian commotions, were only increased through evictions of the poor possessors *gradually*, but did not exist since the time of the first conquering of the land in question, nor originate by occupation of waste uninhabited districts.[1] As to the *cultivated* part of the conquered land which was to remain to the state, we must, therefore, suppose that the magistrate invested with the imperium disposed of this according to his good pleasure, and according to an agreement entered into beforehand with the aristocracy. We see that up to the latest time such a right of disposing of land was granted to the General.[2] The suitableness of this proceeding is clearly explained, if one considers the circumstance that

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[1] Nieb. Rom. Gesch. ii. page of note 301.

[2] Cicero, Rull. ii. 19. "The general being engaged in the war (speaking of Pompey in the Mithridatic war), are the decemvirs to sell those lands, the disposal of which, according to the custom of our ancestors, ought still to rest with Cn. Pompeius?" Again (ibid. 20), "the decemvirs think, if the army have any hope of land, or other advantages from Cn. Pompeius, this they will no longer have when they see all power over these things transferred to the decemvirs." Compare ibid. 22.

the Roman nobility is older than the plebeian consulate.[1] The "nobles" are often enough mentioned before the Licinian laws,[2] and particularly with reference to their possession of the state lands, so that it is readily explained how the oligarchy has always carried on its game. The leading families which biassed the senate and the magistrates took good care to appropriate to themselves in their conquests the good tracts of land. I am inclined to assume that the evil from which Rome afterwards suffered, namely, the extravagant possessions of individuals, had its germ already in a much earlier time, so that, for example, five or six patricians were the exclusive possessors of the state lands in an ordinary colony. By patrician possession of public lands, in the preceding pages, we have understood only their right to ground rents, except where we spoke of the occupation of waste land, since in this case an immediate cultivation of the land by patricians

[1] It is as old as the Roman state itself. The names of the existing families mentioned in the Fasti are only a small fragment of the old populus. And is it possible that, with the admission of the plebeians to the highest dignities of the state, the position and feeling of parties had suddenly so changed, that the patricians, supposed at an earlier period to have maintained among themselves a perfect equality, now, when unity was most required to save some remnants of their old splendour, should have excluded those of their own order from power, who, besides the nobility of their race, had not already had the nobility of office? The origin of the nobility would at this time have been impossible: it must have been derived from an earlier period.

[2] Liv. iv. 48, vi. 5.

may be assumed to have taken place. It is now necessary, before we proceed farther, to determine the nature of these seignorial rights more exactly.

The clients were peasants; in the town the union between client and patron was easily weakened.

I cannot agree with Niebuhr, who supposes that the clients consist of the mass of artizans and shopkeepers of the city, and places in opposition to them "the free agricultural plebeians." As the clientage arose through subjection of the old cultivators, and was founded upon the cultivation of the land, so that the land and soil formed the foundation for the clientage, I recognize in the growth of the city, of commerce, and of trade, the first germ of the destruction of the old dependence, particularly since the establishment of the tribunate gave to the clients new patrons in the tribunes. The effect of towns in the middle ages upon the feudal serfs was analogous. It was impossible for the lords to keep in view and trace a serf amidst the thousandfold trades and occupations of the city,[1] and to compel him to certain services which, regulated according to the profits of his trade, could not be ascertained and exacted, with the punctuality that can be brought to bear upon an agricultural tithe. Whatever client therefore, either through

[1] This cannot be said of Russia of the present day, where a central, universally powerful and all-controlling policy, a result of the West European civilisation in the hands of the government, overpowers the natural development of the national relations, and directs it in a course other than that which it would have taken, had it been left to itself.

misfortune sustained a loss in his land, or sent to the city any of his sons to make their fortune there, increased the number of the independent plebs loosed from the bond of clientage.

The true clients maintained themselves, therefore, through their connexion with agriculture. For this reason perhaps even the derivation of the word *cliens* from *colere* ought not to be rejected, so that *cliens* is equal to *colonus*. But our proposition requires no support from doubtful etymology. The character of the clients as cultivators is sufficiently certain. It is said of the clients of Attus Clausus, that land was allotted to them by the state,[1] namely, two jugera to each.[2] Paullus Diaconus has a statement that the senators were named *Patres*, because they had allotted lands to the poorer part of the community as to their children. These passages, and the palpable likelihood of the case, have compelled Niebuhr to admit that at least a part of the clients were cultivators, and by other investigators this is more or less conceded. Only from the comparison of Paullus, who joins together clients and children of the patricians, we must not draw the deduction, as Niebuhr has done, that the possession of clients was a precarium—that is, depending upon the good will of the patricians, "who could summarily eject a bad man from his holding."[3] The error of such a view is evident from a grant of land to the clients *by the state*;[4]

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[1] Liv. ii. 16. [2] Plut. Pop. 21.

[3] Niebuhr, R. G. ii. page of note 313. [4] Liv. ii. 16.

but it will be quite incontrovertible when we explain the laws of debt. It must have been the desire of the state to preserve a middle class of free agriculturists. Of this simple rule the Roman state did not become for the first time conscious by the corruption of the period of the Gracchi. In the healthy period of the republic the Romans could not be blind to it. The client had therefore the same security for the continuance of his possession, as in later times the Emphyteut and the possessor of estates subject to a land tax, so long as he paid the legal taxes. The tax of the client is the original *fœnus*, which did not become detrimental to him who had to pay it, so much from its amount, as by reason of the thousand vexations and chicaneries to which he was thereby exposed. The rate of interest must indeed have been fixed by custom even before the twelve tables which finally sanctioned the Unciarium Fœnus; but, in the levying of it, it was possible that not only avarice and violence but even a strict adherence to the law in times of need, of scarcity, or hostile inroads, might throw the client into debt, from which he could not save himself. It is also not incredible that many patrons allowed the tax to accumulate purposely for some years, then suddenly came forward with the demand and evicted the insolvent from his land. So it happened that a mass of clients found themselves continually in the greatest distress, whilst even the more respectable among them appeared to be debtors on account of the interest that they

paid. The word "obæratus," with which Varro[1] indicates a sort of peasant, is therefore not improperly an indication of clients, and thus Cæsar[2] speaks of a great number of clients and obærati of the Helvetian Orgetorix who evidently were much connected with one another.

Abuses of their rights by the Patrons; gradual change of their seignorial rights into the right of full property.

The natural progress of civilisation is directed towards centralisation. As the advancing state gradually loosens the tie of dependence of one citizen upon another, and subjects all equally to its sovereignty, so a similar process takes place in the smaller circles of which the state consists. The proprietor of land seeks to get more and more land into his own possession, and to convert his seignorial rights into property. How this process has taken place in the modern states of Europe is sufficiently known; but even in ancient Rome similar conditions produced similar results. Hence arose the constant complaints of the plebeians that the patricians took possession of the ager publicus, that is, evicted their clients from it, and treated it as their property. This is the "agro pellere,"[3] "*grassari in agrum* publicum,"[4] the "possidere *per injuriam*."[5] Hence the demand that "*injusti domini possessione* agri publici cederent."[6] How shall we reconcile this acknowledged and universally admitted injustice, which consisted in the patricians taking possession of the state land, with

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[1] Varro, R. R. i. 17.
[2] Cæsar, B. G. i. 4.
[3] Sallust, frag. p. 245, Bip.
[4] Liv. iii. 5.
[5] Liv. ii. 41, iv. 51, vii. 39.
[6] Liv. iv. 53.

Niebuhr's view, that the patricians alone had the right of such a possession, and in fact the *fullest* right, as they received *no landed property?* The land out of which the plebeians complained that they were ejected by the patricians is state land; but, according to Niebuhr, the plebeians had no right to state land, and consequently could not be ejected from it. They only had full property in land: and this was, according to Niebuhr, secured against all unfair and unjust seizure, nay, before the decemvirs, against every kind of alienation. How could, therefore, the patricians eject the plebeians? Niebuhr thinks[1] that the plebeians might buy public land, and that from this purchased land they had been afterwards ejected. But, even admitting that a few wealthy plebeians bought state lands, and then were ejected unjustly, this cannot have been important enough to produce the consequence that almost every year the mass of the plebeians grew riotous, and cried out against the oppression of the patricians. But it was evidently not wealthy plebeians who experienced such injustice. Niebuhr himself gives a different picture of the state of affairs:[2] "Whilst the soldier was serving against the enemy, the powerful neighbour, coveting his small estate, ejected his wife and his children." With property this would not have been possible. How does Niebuhr think these poor peasants came into possession of the

[1] Nieb. Röm. Gesch. ii. page of note 357.

[2] Ibid. page of note 316.

common land; was it, perhaps, by purchase? I confess I cannot reconcile or understand his various statements and opinions.

There is a passage in Plutarch which shows most distinctly the process of ejection of the clients from their inherited land. This author relates[1] that "a part of the conquered land was made into state land, and transferred over to the *poor and needy citizens*, in return for a small tax to the state. But, as the rich began to *raise* this tax and ejected the poor, a law was made that limited their possessions to 500 jugera." Here we have the clear statement, that *the poor, i. e. the plebeians, were located by the state on the common land.* This speaks directly against Niebuhr's proposition, that the common land was reserved to the patricians only, and solves a considerable difficulty: for now it is not necessary, in order to explain[2] the possession of common land by poor plebeians, to assume purchases, whereby the matter becomes only more involved. The plebeians obtained from the state a right to the territory

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[1] Plut. Vita Tib. Gracch. c. 8. Τὴν δὲ (scil. γῆν) ποιούμενοι δημοσίαν ἐδίδοσαν νέμεσθαι τοῖς ἀκτήμοσι καὶ ἀπόροις τῶν πολιτῶν, ἀποφορὰν οὐ πολλὴν εἰς τὸ δημόσιον τελοῦσιν. Ἀρξαμένων δὲ τῶν πλουσίων ὑπερβάλλειν τὰς ἀποφορὰς, καὶ τοὺς πένητας ἐξελαυνόντων, ἐγράφη νόμος οὐκ ἐῶν πλέθρα γῆς ἔχειν πλείονα πεντακοσίων.

[2] Not only to Roman plebeians but to conquered enemies was Roman common land granted, as well as money for the purchase of agricultural implements, for example, to the Apuanian Ligurians, 40,000 in number, and at a later period again, to 7000 of them who were settled in Samnium. Liv. xl. 38, 41.

which belonged to the state as property by the right of conquest. In acknowledgment of this right of property the plebeian paid a tax (εἰς τὸ δημόσιον) in publicum, or populo, i. e. to the State. Now here we must refer to that which we stated above as to the two periods in the development of a state. In times of a regulated administration the state would have charged certain officers with the collection of this impost; but in the earlier period the members of the populus entered immediately upon the enjoyment of their rights, and therefore, when it is said that an impost was paid to the populus, the patricians individually are to be understood under this term. They raised the payments,[1] which the poor plebeians as clients had to make to them as patrons. The plebeians thus became embarrassed and indebted, and were ejected from the original public land, which was accumulated in large masses in the hands of the patricians.

The estate of patricians threefold.

We have found that the tenure of the patricians was threefold :—1st, They had full property in the land; 2ndly, a seignorial right, *jus in re*, in the land of their clients, whose property be-

[1] That is ὑπερβάλλειν τὰς ἀποφοράς, an expression which has been entirely misunderstood. Plutarch, who shortly before had spoken of ἀποφορά as a *tax*, and not as a *farm-rent*, can, by again using τὰς ἀποφοράς only refer to the previously mentioned word, and by no means intend here to speak of a farm-rent. And if he had understood ὑπερβάλλειν in the sense of *out-bid* in an auction, he would have indicated this previously.

longed to the people, viz. the generality of the patricians; 3rdly, also in their own hands they had portions of this state land, and increased these portions continually by ejecting their clients. Our next problem is now to show what was the right of these clients to the land.

After what we have now said, it perhaps hardly need be stated, that we here entirely reverse Niebuhr's theory. The plebeians, far from possessing an exclusive right to property in the land, were, just as the Attic Thetes,[1] wholly excluded from such property until the Icilian law, de Aventino publicando. They had only land subject to the payment of dues and taxes, and forming part of the ager publicus, the property of the state or populus. This land, it is true, resembled full property, and could be inherited and bought jure hereditario, nexi, ex jure Quiritium, only not optimo, i. e. it was not free from public charge.[2]

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[1] Boeckh. Staatshaush. ii. 28.

[2] Besides the possession of common land on the one side, and full landed property on the other, there is a third mode of tenure, which belongs to neither one nor the other legal condition. To the ager publicus is opposed the ager privatus, but the latter is again subdivided into the optimo jure privatus and the ager privatus (see Rudorff Ackergesetz des Sp. Thorius, p. 57). The ager optimo jure privatus is free from all taxes and charges, except from extraordinary war taxes. The common ager privatus is also property; it is not held as precarious possession, which the state or individuals can resume at pleasure, but jure privato, jure hereditario, jure auctoritatis, jure mancipi, jure nexi (Cicero de Harusp. resp. 7): it is, however, subjected to certain obligations. It is evident at the first glance that such

The plebeians possessed no property in land before the Icilian law *de Aventino publicando.*

The Icilian law divided all the state land on the Aventine amongst the plebs. This presupposes that the whole Aventine, or at least the principal part of it, was state land. Dionysius[1] distinguishes indeed, on the Aventine, held by the patricians, common land and property, which latter, when legally obtained, should remain to the possessor, and, if not, should be divided to the plebs, after indemnification for any improvements and buildings had been made to the

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land was originally common land, in possession of individuals, and whilst it continued to be subject to the charge of the common land, obtained the legal security of property. The original possessors were conquered enemies, and must be satisfied with what was left to them, with precarious and encumbered possession. But their successors were useful good subjects; and to take away from them their inheritance, or to refuse legal protection, would have been impolitic and unjust. Consequently, in all times the tenure of land has gone through these same phases, viz., mere possession passed into full property, as property in general is only the consequence of possession.

It is always dangerous to deduce historical proofs from words and etymologies. Niebuhr adduces the word *assignare*, which applies to the granting of land to the plebeians, as a proof that such land became full property. But, besides the technical signification, *assignare* has also the very general one of *granting*. The "assignment" of a knight's horse is spoken of, although this was only conceded for use, and at all times could be demanded again by the state. Also, with reference to agrarian allotments, assignatio does not always mean appropriation of property. The triumvirs of the Sempronian law are called Triumviri agris dandis assignandis, and yet they only assigned land subject to a tax. It was a characteristic of true property that it was free from tax. Cicero (Rull. iii. 3) even mentions *Sullanarum assignationum possessores.*

[1] Dion. x. 32.

former possessors. Still such private land cannot have been very extensive. The Aventine itself is not so very large; and, if the greater part of it were excepted, as private land, from the agrarian law, this law could not have had the great importance which it really possessed. But the Aventine was always the quarter of the plebeians, where, according to Niebuhr, at the time of their first settling in Rome, the "plebeian hide of land," granted as full property, must have been allotted. Now how is it likely that there were also tracts of private or common land to be found there in the hands of the patricians? This is an impossibility, unless one endows the Ager Romanus with a magical elasticity, by which it might, at will, be extended or contracted. Could we concede to it this quality, then indeed the explanation of some ancient writers, particularly of Dionysius, would be remarkably facilitated, who speak occasionally of assignments of state land, at times of the greatest distress of the state, and of pressure from without. Nay, even Niebuhr imagines a *general* assignment of land to the citizens of royal domain of seven jugera a head,[1] and fancies that in every division of land *all* the plebeians participated.[2] In default of this capability of extension, we must admit—1st, that the plebeians were settled on common land on the Aventine, and, secondly, that such common land was granted to them by the Icilian law. That

[1] Niebuhr, Röm. Gesch. vol. ii. p. of note 357. [2] Ibid. 355.

could be done in no other way than by changing the legal tenure, viz., by converting the former dependent and encumbered possession of state land into full property. Now, if it follows from this that before the Icilian law the plebeians did not even possess free property upon the Aventine, the peculiar plebeian town, how much less is this credible with regard to other localities. But this view is confirmed further by a glance at the agrarian disturbances which, since the time of Cassius, occurred almost annually, and finally led to the Icilian laws.

The earlier tribunicial motions for agrarian laws were not intended to divide conquered land, but to free the possessions of the plebeians from burthens.

The ancients, in speaking of the repeated efforts of the tribunes in favour of the agrarian laws, invariably think of proposed grants of newly conquered lands. We cannot adopt this view without fancying, that the Roman territory possessed that miraculous quality, alluded to above, of infinite extensibility, much like that which we must assume in order to understand, where in all the world the districts lay which, according to the account of Dionysius, Coriolanus, when encamped before the walls of Rome, demanded back for his allies, the Volscians, but which the Romans most obstinately refused. Such narratives are either based on misunderstanding or they are altogether without foundation. But the latter is not probable with respect to the numerous accounts of agrarian laws before Icilius; yet whence was the land to come which it was proposed to divide, since during the greater part of this time Rome only maintained itself with great dif-

ficulty against the Volscians and Æquians. The truth of the matter is, that the plebs did not insist on colonies and new grants of land, but on the abolition of the feudal rights of the patricians, which during these disastrous wars bore particularly hard upon the poor. In many passages our authors dwell upon the difference between these agrarian laws and colonies. Livy relates[1] that the senate determined to divide the ager Bolanus, in order to silence the desire for the agrarian law. A similar compromise is mentioned in 467, B. C.[2] when, instead of the agrarian law, a colony to Antium was decided upon. Still, it is said, only a few Romans would go there as colonists. The populace preferred clamouring for land in Rome to receiving it elsewhere.[3] Nobody will wonder at this. The colonies of those times were very different from those of the Gracchi and of Sulla. They were real military posts, almost in the middle of the hostile country.[4] To take a part in

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[1] Livy, iv. 51. [2] Livy, iii. 1.

[3] Compare Livy, iv. 36 and 58, where ager publicus and colonies are distinguished.

[4] Compare, for example, Livy, x. 21. It was decided to send colonists to Minturnæ and Sinuessa. "Men were not easily found who would give in their names, because they considered that they were sent to an almost perpetual encampment in a hostile country, and not to obtain farms." The colonists were not sent out. When, in 492, Velitræ, desolated by a plague, was to be restored by means of a colony, and no one showed himself willing to go, it was determined that lots should be drawn for the colonists to be sent out, and the refractory were threatened with a severe punishment. Dionys. vii. 13. Plutarch, Coriol. 13.

them was more an irksome duty than a reward. The practice of later times has in this matter, as in many others, confused our witnesses. These represent the plebs before the decemvirate as desirous of colonies as it was in the time of Livius Drusus. Nay, Niebuhr goes still further, by stating that the oldest colonies, Antium for instance (467 B. C.), consisted entirely of patricians,[1] so that it seems the great benefit of a colony was denied to the plebs by the ancient constitution. But this error disappears at once if we form a correct view of the earlier colonies in question. It could not be the policy of the patricians to weaken their class through the emigration of numerous colonists, whereby neither could an advantage accrue individually to the latter, nor would the whole class gain the least accession of power. How, indeed, should patricians have desired grants of land in an hostile territory, amounting to two, or two and a half, or three and seven-twelfths, jugera? The part which the patricians took in colonies was of quite another kind. They formed, not the mass of the colonists, but the patrons of the colony, the few landowners of whom the new colonists, as well as the remaining old inhabitants, formed a class of clients on the old Roman plan. The number of patricians who obtained in the colonies only landed property and no seignorial rights was doubtless very small. There is indeed a difference between a regular

[1] Niebuhr, Röm. Gesch. vol. ii. note 559.

colony and a mere granting of land in a conquered country. The latter was less dangerous and more productive; but, from the nature of the thing, it occurred only in rare cases, when all around there was little fear of war and aggression. But, during the dangerous Volscian wars, such grants of land could hardly be thought of: and we therefore adhere to our position, that the wishes of the plebs, in the agrarian laws, during the time in question, pointed to the old state land, partly in order to free the plebeians settled on it from the bond of clientage, and partly to restore to the old possessors such portions as had already fallen into the hands of the usurers. The first law of this kind which the tribunes finally succeeded in carrying was that of Icilius respecting the publication of the Aventine: and we are therefore justified in recognising in it the first legal foundation of the independent landed property of plebeians.

The rights of the later provincials were analogous to those of the earlier plebeians.

As the class of the plebeians had arisen through subjection of the old inhabitants, their original right to land ought to be shown by comparison with that right which in historical time those conquered enemies obtained who were left in possession of their land. That they did not hold their land free from charges is generally acknowledged;[1] but the particular kind of these charges is involved in more than usual obscurity. The most popular and general view has been this: that

[1] Niebuhr, Röm. Gesch. vol. ii. page of note 81.

the conquered paid a tenth to the Roman state, which was leased by the magistrates to the Publicani. This, it is quite true, was the case in later times, after the conquest of Sicily; but the question is, whether we may at once extend this arrangement to the older and oldest time, against which the general reasoning a priori speaks, which we before have mentioned with reference to the advancing development of the state administration. Under such circumstances we demand, therefore, distinct evidence to prove the existence of such a tax paid to the state. But all that is stated of the tenth has reference to a payment to the state, which the patricians, as possessors of the ager publicus, had to make, of which we shall have to speak by and by. Of a tenth payable by the conquered *to the state* there is no trace in the old time: and therefore we may safely argue that the right of receiving a land-tax, which in some form or other must have existed, was enjoyed by individual members of the state as patrons. But that this view may not be considered as mere speculation, we adduce a testimony from Dionysius, which, in the place where it appears, deserves particular confidence.[1] He says, when speaking

[1] The statements of Dionysius regarding Antium are distinguished by peculiar exactitude and value. By no example do we so clearly know the nature of the league with the Latins and Hernicans, as by that of the colony of Antium. Have we, perhaps, to thank for this the much blamed Valerius of Antium, who might have had exact sources of information as to his paternal city?

of the Roman colony at Antium,[1] that "the Antiates who remained behind cultivated the lands allotted to them, as well as those of the colonists, and paid a certain tax in kind to the colonists."

On account of the fragmentary condition of our sources regarding the existence of such duties of the clients towards their patrons, one might easily conceive the idea that this social arrangement did not exist among the Romans, if a single passage, like the one mentioned by Dionysius, had not been fortunately preserved to remove this doubt. However, the same arrangement was not unknown in the other Italian cities. A very striking example is found in Capua, where the plebs was obliged to pay to the knights, 1600 in number, a tax which produced for each individual knight 450 denarii. These Campanian knights were Roman citizens: and their position with respect to the Campanian people was the same as that of the Roman patricians in the colonies to the rest of the colonists, and in Rome to the Roman plebs.

The conquered people became therefore clients of Roman patrons. Their land became ager publicus, but was, in separate lots, placed under some Roman citizen, who received the tenth of the produce. But besides these seignorial rights the Roman nobility possessed in the colonies, just as in Rome, distinct private property. It is probable

[1] Dionys. x. 60, *Ἀντιατῶν ὅσοι μὲν εἶχον ἐφέστια καὶ κλήρους ἔμειναν ἐν τῇ γῇ, τά τε ἀπομερισθέντα σφισὶ καὶ τὰ ὑπὸ τῶν κληρούχων ἀφορισθέντα κτήματα γεωργοῦντες ἐπὶ ῥηταῖς τισι καὶ τεταγμέναις μοίραις, ἃς ἐκ τῶν καρπῶν αὐτοῖς ἐτέλουν.*

that some of the conquered, as in Capua, for instance, the whole equestrian order, on account of services rendered, were rewarded with freedom from taxation, as well as with the Roman citizenship and corresponding advantages. But the Roman plebeians who took part in the colonies obtained in the old time no better right than the conquered people; and they remained in the clientage. How and when they obtained a better position we shall see in the sequel.

Since the time of Niebuhr, it has been considered an established proposition, that the patricians had to pay annually a tenth to the state for the state land in their possession. This does not quite agree with our view, viz. that the members of the populus received a tax from the state land as an acknowledgment of their sovereignty, and as a reward for their services to the state. Now if Niebuhr's view is right, our's is involved in some difficulty; it will, therefore, be worth while to investigate this matter.

The statements which speak of the payment of the tenth to the state for the ager publicus do not mention the time of the introduction of this tenth. It is said only, quite generally, that the tenth of grain, and the fifth of fruits, and a corresponding grazing fee, had to be paid.[1] Niebuhr may therefore, on this account, hold himself justified in declaring the tenth to be very old,[2]

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[1] Appian, civil. i. 7.

[2] Röm. Gesch. vol. ii. p. of note 348.

although he also admits that the law was evaded and the tenth not paid.[1] And there is indeed sufficient evidence for this, as, for example, in Livy,[2] where the hope is held out to the plebs of imposing a tenth, and of giving out of it a regular pay to the soldiers. But, when the pay was actually introduced, it was taken, not from the tenth, but from a tribute assessed according to the census; for there is no reason for doubting Livy's distinct statement to this effect.[3] The introduction of a regular pay to the army, therefore, does not make that of the tenth to the state absolutely necessary.

Now as to what concerns the period of the first introduction of the tenth, I am not acquainted with any statement which places this earlier than the conquest of Capua, in the second Punic war. The case of Capua is here, as in the case of the Campanian knights, particularly instructive. It shows in what light this duty of paying a tenth to the state was regarded, and that it was only considered the extreme punishment of a rebellious enemy. The case of Capua is altogether an exceptional case. The Campanian plain was always in Italy most distinguished for fertility; nay, some cases excepted, it was the only ager publicus, in the later sense, according to which such land was so named, of which the state directly

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[1] Röm. Gesch. ii. p. of note 360. [2] Livy, iv. 36.

[3] Liv. iv. 60. "After the senate had paid the tax most scrupulously, *according to the census*."

received the tenth. If the land conquered in Samnium, Apulia, Calabria, Lucania, Bruttium, Etruria, &c. had been subjected to the payment of a tenth in the same or in a similar manner as the Campanian plain, how could it be that we have not a multitude of traces? How could Campania remain so isolated? How could mention be made only of leases of the Campanian land. And how could the introduction of the censorial location be mentioned only with reference to this land?[1] How could the tax which the state drew from Campania be considered as a chief income of the treasury?

The Campanian plain was from the beginning most emphatically declared to be state land; still, in the course of a few years, private parties appropriated to themselves certain portions of it. This was possible, because no periodical leasing of the tenth took place by Roman magistrates. It is capable of ready explanation, that, after the first assessment of the tax of the tenth, which might be a very deficient one, the possessor of the land, if he only paid his tenth, might very easily keep back some acres as it were for himself, and might give it out for property, since the tenth might be so small that it only seemed to attach to the remaining lands. Thus disorders continually creep in where periodical revisions do not take place. A neglected payment, which was winked at, might soon be adduced as a proof of freedom from the

[1] Liv. xlii. 19.

tenth. The clique of the nobility did their part to promote such proceedings. But to this an end was soon set, through the commission with which the censors were charged of leasing the tenth regularly every five years. Now each censor had the contracts of the leases of his predecessors in hand: and, as in the fixing of the tenth the average annual produce was estimated, the lands subject to this burden were never lost sight of, and therefore remained to the state undiminished. Now, even if we had not the statement regarding the *new arrangement*, namely, the commission to the censors in respect of the Campanian land,[1] yet we might conclude, in respect of the earlier times of the republic, with the greatest certainty, that neither censors nor other magistrates were charged with the leasing of the state land. It would otherwise have been impossible that the nobility should have appropriated it to themselves so thoroughly.[2] But, if, *before* the conquest of Capua the state had derived the tenth from the state land, is it not probable that the practice of leasing out the revenue through the censors would have been adopted much sooner, a practice by which, a few years after the publication of the Campania, the avarice of the possessor was put an end to as soon as it showed itself? And why should this arrangement, which was found so serviceable in

[1] Liv. xlii. 19.

[2] "This year great numbers were prosecuted by the Ædiles, for having in possession larger quantities of land than the law allowed." Liv. x. 13.

Campania, not have been extended to the rest of the common land in Italy? We hear nothing of a leasing of the tenth of Etruscan, Samnite and other state lands, through the censors: from what other cause, but because there was no other ager publicus subject to the tax? Nor is it likely that by chance we should have lost all the evidence respecting such censorial leasings; for no complicated law-suits could have arisen in consequence of the Sempronian laws to decide what land was state land and what was absolute property, if by periodical leases in other places, as well as in Campania, the ager publicus was as exactly defined and separated from absolute property as the land is from the sea.

But of pasture land the State received a settled grazing fee.

What in the foregoing has been said of the state land applies, however, only to that portion of it which was arable; of pasture land the state did receive a settled grazing fee. As the former required continual attention and care, the state let it willingly out of its hands, and gave it over to individuals who for their own interests managed its cultivation, and thereby in course of time obtained certain rights in it. Pasture land, on the other hand, the state preferred retaining in its own hands from a double motive; first, because it is productive without any further cultivation, and, secondly, because it can be used by many in common. On this account the state used it for the benefit of its revenue, by demanding from the graziers a certain payment per head. Hence the

statement in Pliny,[1] that in the censorial tables all objects from which the state draws revenue are called Pascua, since pastures for a long time were the only source of revenue. We have here another proof that it was only in later times and exceptionally, that a tax was paid to the state from the remaining common lands.

One of these exceptions is very striking, and shows, just because it is an exception, what the rule in general was. After many disputes respecting the Sempronian agrarian laws, a tribune, called Borius by Appian,[2] proposed to put an end

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[1] Plin. Hist. Nat. xviii. 2. "Even now, in the registers of the censors, all things are called Pascua, from which the people derive an income, because for a long time this was the only revenue." Common pasture grounds are mentioned in Apulia and Samnium, where the censors leased the grazing tax to the publicans. Varro, R. R. ii. 1. "Flocks of sheep are driven away far from Apulia into Samnium, to summer, and the owners register them with the farmer of the revenue; for if they feed cattle not registered they offend against the censorian law. "As the pasture land, on account of the tax paid from it to the state, might be termed ager publicus with particular reason, and as in early times it was the only land which bore the character of the later state land, i. e. was subject to a payment of a tax to the state, and as, besides this, the pasture land was *uncultivated*, and formed a contrast to tilled land, we may perhaps be enabled to explain the statement of Appian (civ. i. 7), that it was only the waste conquered land that became state land. The liability of paying the tenth of the pasturing cattle explains also why this cattle was not res mancipi. The absolute *property* of all things paying to the state one-tenth belonged to the state. Cultivated land and agricultural cattle were res mancipi, and did consequently not pay the tenth. As to the difference between grazing and corn farms see Varro, R. R. i. 2.

[2] Appian, civ. i. 27.

to all farther division of the common land, and to lay on the possessors a tax for the state. No proof can be more cogent than this. A tax which *now first* was imposed could not already exist. All farther explanation would be superfluous. We require only yet to add what immediately follows in Appian, that soon after this the new tax was again set aside.[1]

Proceedings of the patricians on the ager publicus.

Thus we consider it proved that before the publication of the Campanian fields no tax from the produce of the land was paid to the state direct, or, in other words, that there was no ager publicus in the later sense. The earlier ager publicus was either pasture land, or it was in the hereditary possession of the clients, who had not to pay direct dues to the state, but to the patrons.

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[1] Rudorff (Agrarian law of Sp. Thorius, p. 34) says that by the law of Borius the abrogated tenth done away by the lex Livia was re-introduced, and at the same time converted into a poor rate. That this is a palpable error the words of Appian show clearly (Civ. i. 27): "that the land should be no more divided, but remain with the possessors, and that a tribute should be raised off it for the people, and this money be distributed;" where there is no word said of a re-establishment of the tenth. Another proof is the lex Livia, to which Rudorff refers—"for this, being intended only to lead astray the plebs, did not do away with a tenth of the domain land of the patricians, but gave to the *poor* in the proposed colonies land free from the tenth, whilst C. Gracchus bestowed it, charged with the tenth." Plutarch. C. Gracchus, 9. "When this man (Caius Gracchus) divided the public land amongst the poor, on condition that each should pay a rent into the treasury, they (i. e. the Optimates) inveighed against him as if he were flattering the many. But Drusus was praised by them, though he abolished this tax from the divided lands."

Properly speaking, indeed, all the land of the Roman people was ager publicus; but when, in consequence of the Icilian law, a part of the land-possession of the plebeians was raised into absolute property, a distinctive name became necessary for that land which still remained subject to the charges payable to the populus. Now the name of ager publicus became limited to this land; and at the same time it indicated the legal title, based upon which the populus demanded the tenth of the produce. By debts and other misfortunes the clients in the course of time were gradually ejected from this ager publicus, which thus, by degrees, came into the possession of the nobles. Now they could adopt one of two ways to cultivate it—either they left the former possessors as lessees upon the land, or they ejected them, and farmed it with slave labour. This was the practice with respect to landed property in general: it was either tilled by farmers or slaves: and so it happened, in the course of time, that the absolute property and the state land found in the hands of individuals flowed one into another, and it thus became difficult to distinguish the two. The plebs naturally insisted more and more vehemently upon being freed from the clientage, which not only oppressed individuals but threatened to press down the whole class into a pauperised populace. But the aristocracy clung tenaciously to their rights. Even in the new colonies the plebeians were only settled as tax-paying clients, and thus placed shamefully on a level with the

conquered. From the pittance of two or three jugera they were yet made to pay the tenth. Hence the haste is to be explained with which the senate decreed the colony to Lavici.[1] The usual quantity of two jugera was allotted, but not as absolute property, as the tribunes would have proposed had not the senate anticipated their motion. In Ardea[2] and Antium[3] Rutulians and Antiates were named as colonists, together with the Roman citizens. That these had to pay a land tax to the Roman patricians has been stated above. From their juxta-position with the Roman colonists we must argue, therefore, that these latter were placed on the same footing.

Proceedings at the colonisation of the conquered territory of Veii.

But what is stated in reference to the Veian territory is particularly interesting. After the conquest of Veii, it is said[4] the plebs conceived the dangerous idea of dividing the Roman state, by emigrating with half the senate and people to Veii. This plan was brought forward with renewed vigour, since after the burning by the Gauls Rome was a heap of ruins, and the uninjured city of Veii seemed fitted to receive the whole Roman population. The most wonderful perversions of history may be oftentimes simply unravelled and changed into useful traditions, if one knows the magic word which opens the hidden treasure. It was told of Sp. Cassius that he wished to make grants to the Latins and Hernicans of the Roman Common land. Now this absurd story serves only

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[1] Liv. iv. 47.
[2] Liv. iv. 11.
[3] Liv. iii. 1.
[4] Liv. v. 25.

to prove that these two allies of Rome were entitled to an equal share in a division of the land taken in a common war. The same result is obtained indirectly from an account in Livy, that from the conquered Hernicans two-thirds of their land were taken. Thus what is related of the intended emigration to Veii, and of the division of the state into two parts, is nothing but a misrepresentation of the just claim which the plebs raised to free property in the Veientian territory. The senate opposed this with the greatest obstinacy, and employed all possible means, and, at the last, hypocrisy. As Crœsus, at the plundering of Sardes, advised Cyrus to recover from the soldiers the plunder under the pretence of sacrificing a tenth to the Gods, so the senate pretended to have dedicated to the Delphic God the tenth of the booty and of the whole Veientian territory. The patricians, therefore, collected the yearly tenth for Apollo; they undertook the redeeming of the vow, satisfied the god with a trifle, or kept the whole tenth for themselves. The proposition of the plebs was consequently rejected. An assignment of land was, it is true, made in the Veientian territory, but under the old condition of dependence. The plebs could not complain that this assignment was niggardly. Seven jugera to each man, and more in proportion to his family, was a greater amount than had ever before been divided, and, besides this it was in the neighbourhood of Rome, and in fertile land.[1] It would be quite impossible

[1] Liv. v. 30.

to comprehend what more the plebs could wish if we had not the above mentioned hypothesis to assist us.

Manlius gives perfect freedom to his clients on the Veientian territory.

This hypothesis is confirmed by the story of Manlius. A disgraceful distortion of history accuses this honourable man, as well as Sp. Cassius, and Tib. Gracchus, of having attempted to make themselves tyrants. But the falsification in the patrician interest is as clear here as shortly before in respect of the Veientian agrarian laws. Manlius himself was one of the patricians who had obtained in the new conquered land new clients and seignorial rights. After the Gaulish invasion, when the plebs renewed their proposal for freedom from the tenth, with reference to the Veientian land, Manlius was generous enough to give the example of nobly sacrificing his own interest. It is related that he sold his land in the Veientian district, and with the money saved debtors from servitude; afterwards, at his trial, he brought forward four hundred of such debtors, who owed to him their freedom. Now if we reckon only two jugera per head, four hundred plebeians possessed exactly a Saltus,[1] the patrician share of the state land. These four hundred debtors, therefore, are in fact the clients of Manlius on his portion of the Veientian land, whom he had freed from the clientage.[2]

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[1] According to Varro. See Salmas. ad Solin, page 679.

[2] According to Appian (Ital. 9), Manlius proposed a general abolition of existing debts. This is to be understood of an abolition of the clientage, by which the obærati became free from

It is true this is not a mathematical proof: but when so many circumstances coincide the most complete certainty nevertheless ensues. No one will consider as historical the plan of a real emigration to Veii. It is not a less exaggeration, that Veii after its conquest was uninjured, than that Rome was levelled to the ground by the Gauls. When it is said that the enemy even pulled down the walls, we may from this one exaggeration conclude as to others. If the mass of the enemies really besieged the capitol many months, it could not appear advisable to them to destroy all shelter; in fact, to undertake the trouble of pulling down the walls would have been the height of absurdity. Of the monuments of the old time *before* the fire, which, although exposed to this general destruction, were still shown in later times, as for example, the statue of Clœlia, in the house of the Rex, many may indeed have been spurious; yet a deceit of this kind would not have been even possible if it could have been maintained with certainty that all such relics were destroyed by the Gaulish fire. That the narrowness and irregularity of the streets in later Rome were caused by the haste in rebuilding the city after the fire is at best a conjecture. Ancient Rome was certainly not regularly built: and the repeated great fires before Nero afforded plentiful opportunity of

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debt, just like the statements of Victor (de vir. ill. 29) and Appian (Samn. I. 1, 2) in respect of the Genucian law, whereby, as they pretend, a general abolition of debts was ordained.

rebuilding the neighbourhood of the Forum and Velabrum. It should not astonish us that the annalist to whom we are indebted originally for the statement of the 400 liberated debtors took no notice of the assignment of the seven jugera, but calculated his numbers upon the supposition that two jugera, the old normal plebeian portion, were given to the clients of Manlius.

Rogations of Licinius and Sextius.

Eight years after Manlius's death, Licinius and Sextius brought forward their famous bills. They were moderate; and to this moderation they owed their success, without a convulsion of the state. Their endeavours were not directed to a general abolition of the clientage; they opposed only the avarice of the rich, inasmuch as they fixed the maximum of the state land, which they could take immediately into their hands, at 500 jugera.[1] From the land which exceeded this quantity they were not to be able to eject their clients; or, if this had already happened, the clients were again reinstated in their rights. But that the debtor might be enabled to maintain his position, a diminution of his debt was proposed. I conjecture the following. The state land, which the client cultivated, and whereof he paid one tenth to his patron, may be considered as a debt-capital, of

[1] The proposition of Niebuhr, which establishes this, is now again brought into doubt by Huschke, supported by Puchta and Rudorff. They refer the maximum of 500 jugera not exclusively to state land. Yet this theory I hold to be completely refuted by Niebuhr's reasoning, and by Mr. Long in the Classical Museum, 1844.

which he paid a fœnus. Perhaps the word Sors, as debt-capital, is derived from the land awarded by lot. If the client were incapable of payment, the creditor could consider the arrears of tenths as capital, and thereon charge an interest. That was therefore interest upon interest. Whatever part of such was paid, that I conjecture Licinius deducted from the capital; that is, from the sum of tenths originally due; and he gave to the debtors two years' credit, during which they had to pay no interest; and thus they could clear off the arrears.[1] I do not venture to decide whether at the same time measures were taken for compounding for the tenth. Still this seems indicated by Appian,[2] when he says that it was believed "the remaining land, that is, that beyond 500 jugera, would gradually be sold to the poor."

The Licinian laws did not heal the evils of the state. Ten years after their introduction (357) it was found necessary to re-establish the Uncial interest, which the twelve tables had already introduced. This regulation referred to taxes paid from the domain-land by the occupying clients;

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[1] Niebuhr, in order not to charge Licinius with any disrespect for the law, explains the matter in this way, that the debtor, after a certain delay, when he could pay neither interest nor capital, sought out some new creditor who took upon himself the previous debt with the interest. This process continued from year to year, and little interest was paid. In this way the last creditor lost little indeed by the Licinian law. Nieb. R. Gesch. vol. iii. p. of note 24. But what, we ask, did the debtor gain?

[2] Civ. i. 8. *ἡγούμενοι τὴν λοιπὴν γῆν αὐτίκα τοῖς πένησι κατ' ὀλίγον διαπεπράσεσθαι.*

but it might also afford a standard for the usual interest on loans; and, whilst in the twelve tables only the first sort of interest might be thought of, the new feature of the law of the year 357 may be supposed with probability to be this, that for the first time the old rate of interest was made legal, as real interest from borrowed capital; for by this time monetary transactions had begun to be so important, that the attention of the legislature was drawn to them; but after ten years this rate of interest also was again lowered by one-half; yet this regulation did not cure the rooted evil of debt; and the apple of discord was left in the state. Finally, in the year 342, somewhat more than 100 years after the decemvirate, the discontent of the plebs came to an outbreak, and the oligarchy, compelled by physical force, gave way, and acknowledged the possession of land of all Roman citizens as property.

Total abolition of all burdens on land in the year 342.

The detail of the insurrection of the legions in 342 has been very much distorted by the partiality of the annalists. To the soldiers who had wintered in Campania the foolish plan is ascribed of having determined to seize upon Capua, plundering it, killing the inhabitants, and keeping the land for themselves. This accusation reminds us of that with which the plebs was charged with reference to the intended emigration to Veii, and it has a similar historical foundation. It was the dissatisfaction of the plebeians that broke out in the army in Campania, when they reflected that they continually were considered as serfs, and when they witnessed the oppression in which the

settlers in the Pontine plains were held by their patrician lords. The greater part of the conditions under which peace was concluded concerns us little. We shall mention only one which has appeared quite incredible to most writers. Livy[1] found in some of his authorities, that a tribune of the people, L. Genucius, had proposed a law, *ne fenerare liceret*,[2] "that it should not be permitted to lend money on interest." This reminds us at once of a passage in Appian,[3] where it is said that an old law forbad usury in Rome; and in Tacitus,[4] who relates a suppression of the *Versura*. *Versuram facere* is used for fœnerare.[5] Such a regulation, which contradicted all custom and tradition in Rome, no annalist could venture to invent. A misunderstanding must lie at its root. We require only to understand by usury the exacting of the tenth from the land, and the law becomes at once intelligible, obtains historical meaning, and stands in the most perfect accordance with the other events of the time. Lex Genucia.

This law ordained that in all new colonies, and

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[1] Liv. vii. 42.

[2] The Rogations of Genucius must have been carried; for that which forbids to fill the same office twice within ten years is found soon after in full force. Liv. x. 13. The Tribune Genucius brought the matter forward; but probably the law was called Lex Marcia, from the consul of the year, A. Marcius Rutilus. For this is probably the law to which, in Gaius, iv. 23, reference is made. Lex Marcia adversus fœneratores ut si usuras exegissent de his reddendis per manus injectionem cum iis ageretur.

[3] Appian, civ. i. 54.

[4] Tacitus, An. vi. 16.

[5] See Paull. Diac. s. v.

in the assignments of land in general, every Roman citizen should obtain his part *as property*. From that time forward the colonist no longer should be a client but an independent citizen; from a villain or a serf he was to become a proprietor of land. Nevertheless, such was the tenacity of the old Roman institutions, that the clientage was even now not swept away entirely. It continued to exist, though modified in some respects; for the lex Pœtelia soon after ordained that debts arising from the omission of the customary or legal payments of a client should not be converted, by a legal fiction, into debts of borrowed money (pecunia credita).[1] The lex Genucia was called forth by the pressure of debt,[2] and had in many respects reference to agrarian matters. As the conquered land was divided amongst soldiers, according to the rank of the individuals, so that, for example, the centurion obtained the double of the common soldier, it was found necessary to limit the arbitrary power of the oligarchic commanders, who, as we see from these very events, degraded meritorious soldiers, or removed them from the army, probably immediately before the division of the plunder, in order to give this to their adherents only.

Extension of the Clientage to Latium and all Italy.

Corruption and crime are not the particular hereditary quality of a definite number of families. The avarice and tyranny of the Roman patricians was not a peculiarity of their blood, but resulted

[1] Liv. viii. 23. [2] Liv. vii. 38.

from their position. If those who complained so bitterly of it had been in their place they would have acted in the like way. This they showed sufficiently when, after they had been raised to an equality with the patrician gentes, they began to assume the character of an aristocracy, ruling over the dependent Italians. The spectacle is exactly the same, only the theatre is larger. Hardly had the Roman plebs broken the last bond of subjection than the Latin war burst out and filled the gaps arising from the emancipation of the old with a rich supply of new dependants. The Latins now took, on the whole, the position of the earlier plebs. Opposed to them was, not the old patrician populus, but the Roman *people*. Not without good reason were the Latins and Hernicans so shy of the Roman franchise which was forced upon them. It was the franchise of the clients, at least so far as regarded the duties imposed. By the numerous publications of Latin districts which occurred in the course of the Latin war, we are to understand a subjection of the same to Roman patrons. In Latium, without doubt, the same political institutions had existed as in Rome. Here also were there patricians and plebeians, and probably under very similar conditions as in Rome.[1] The chief losers by the subjection were the Latin patricians; the clients only changed their patrons; and on the

[1] Madvig, opusc. ii. page 130, denies that there was an aristocracy in Latium. But Dionysius says somewhere that all the Latin towns ἀριστοκρατοῦνται. The truth of this is exemplified by the civil war in Ardea, related by Livy, iv. 9.

other side the chief gain fell naturally to those who had to distribute it, that is, to those who stood at the helm of the Roman state. And now we have an opportunity of discovering a particular trick of the Roman aristocracy, always so rich in subtlety and deceit, whereby, after all, the mass of the plebs was cheated of the fruit of long exertions. Roman citizens, according to the Lex Genucia, were no longer to be sent to the colonies as dependants. What happened therefore? Instead of Roman citizens, Latins were sent, to whom the law did not apply; and thus the Latin colonies afforded a means of maintaining tolerably perfect the old practices.

The Latin colonies.

With respect to the Latin colonies, Madvig's admirable treatise[1] must be consulted. As certain as it is that the colonists in the Roman colonies (coloniæ civium) *retained* their full franchise (the jus suffragii, honorum, commercii and connubii), so certain is it that the Latins, who formed the Latin colonies, and the Romans who joined them, did not possess this right. Madvig's proof that the Latin colonists in the beginning had no commercium is satisfactory. The want of the connubium and the higher franchise is universally acknowledged. Now it is well to remark that the colonies of Roman citizens which were sent out before the great Latin war appear afterwards under the class of Latin colonies. Signia and Circeii are mentioned respectively among the

[1] Madvig, opusc. i. p. 208, especially from p. 261.

xviii and xii colonies in the war with Hannibal. Still as to their original nature, whether they were Latin or Roman, we may entertain doubts, as they date from the time of the kings. But Velitrae, founded in the year 494 by colonists *from the city*,[1] was without doubt Roman. In the narrative of their revolt the colonists are named Roman citizens.[2] After the Latin war (338) Velitrae was severely punished, its common-wealth annihilated, and it occurs after this no more in history.

A like fate had Satricum, a Roman colony of 384, on account of its treason. It disappears from history. Lavici, a colony of citizens of 418, decayed afterwards,[3] and probably from this cause is not enumerated among the Latin colonies. On the other hand, Norba appears at a later period as a Latin colony. It was founded in 492,[4] and could at that time be a Roman colony only. Ardea, founded 442,[5] was necessarily Roman, as it was situate in one of the territories taken from the Latins; still it appears afterwards as a colony with Latin rights.

Sutrium must also have been a colony of citizens, as according to Velleius it was founded seven years after the burning of Rome by the Gauls, at a time when Latium was alienated from Rome. Nevertheless this colony appears afterwards as a Latin one. Finally, the same holds true of Nepete, founded in 382.[6]

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[1] Liv. ii. 31.
[2] Liv. vi. 21. Dio. vii. 13.
[3] Cic. Plauc. 9.
[4] Liv. ii. 34. Dio. vii. 13.
[5] Liv. iv. 11.
[6] Liv. vi. 21.

We see, therefore, that, except three, all colonies of Roman citizens which were founded before the great Latin war appear afterwards as Latin colonies, and of the three in question one was decayed, and the other two forcibly destroyed.[1] Now Madvig's opinion is, that these colonies alluded to were always Latin. Still this is impossible, from the reasons urged in respect of each of the colonies. It remains, therefore, only to suppose that the right possessed by the colonists of the colonies founded before the Lex Genucia were so similar to the later rights of the Latin colonies, that such older colonies might be classed without difficulty with the Latins. It is certainly not credible that the early Roman colonists in Ardea, Nepete, or elsewhere, lost legally the connubium or suffragium. We can and must allow the force of all the reasons which Madvig urges against such a degradation of Roman citizens who had to maintain firm in a hostile country the sovereignty of their state. But the right of voting was rarely exercised by the colonist removed from Rome; for the connubium with citizens who lived in Rome, the opportunity was afforded to those only who could often and easily leave their domiciles, that is, the rich. The poor marry always in their immediate neighbourhood. Similarly, the jus honorum could be enjoyed only by the nobility in the colony, for it was they alone

[1] It is uncertain as to Vitellia, whether it is the colony of citizens, which was established, according to Livy, in 395. (Madv. l. c. page 264.)

that practically had the full enjoyment of the Roman franchise. The commercium of the old Roman colonists of plebeians was, as we have seen, of a very defective kind. It did not allow Quiritarian landed property. It appears then naturally that, as Latin colonies arose, and the lesser right of the same was legally established, the old Roman colonies by degrees were assimilated to them, and finally might be put in comparison with them; yet it is quite possible that local rights here and there were retained in the old Roman colonies.

The general similarity of the law and the constitution of the ancient Roman to the Latin colonies fortunately enables us to extend our knowledge of the earlier ones from what we know with a somewhat higher degree of certainty of the later. We have said that the Roman colonists who were plebeians were, as regarded political rights, placed on a level with the old inhabitants of the locality where the colony was founded; this is confirmed by the fact, that those Roman citizens who joined a Latin colony lost their Roman franchise, and sunk to the degree of Latin citizens. We have further said, that the Roman patricians were the patrons of the colonies. A corresponding institution in the Latin colonies was, that the nobility in them obtained the full Roman franchise (that of the early patricians); for the Roman franchise was obtained in the Latin colonies by all those who had discharged an honorary municipal office. This nobility in the Latin colonies, and the Roman patricians in the old Roman colonies, formed

the connecting link between the mass of the colonial population and the Roman state. In their hands was the government and direction of the colony. So long, therefore, as they were devoted to Rome the colony was faithful, and their allegiance to the Roman state was secured by the Roman franchise which they enjoyed, together with the many material advantages, the maintenance and enjoyment of which depended upon their connection with Rome, which guaranteed them. Madvig is mistaken in stating[1] that the Roman triumvirs, who according to Livy[2] remained in the colony of Ardea, which he (erroneously) declares to have been Latin from the beginning, lost the Roman franchise. It cannot be doubted that a number of Roman burghers joined each Latin colony, maintaining their right, and laying the foundation for the formation of a colonial nobility. These are the patrons of the colony to whom the common colonists paid taxes, by reason of their quality as clients.

That the Latin colonists were liable to pay a land tax to their patrons, follows, not merely from a comparison of these with the old Roman colonies, but from a remarkable circumstance which Madvig[3] points out. Not only were Roman colonies founded very rarely since the great Latin war, and the number of colonists in those sent out restricted to the old normal amount of 300, but

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[1] Madv. opusc. i. p. 263. [2] Liv. iv. 11.
[3] Madv. opusc. i. p. 286.

extreme economy was shown in the assignments of land. In Potentia and Pisaurum 6 jugera were apportioned to each man, in Mutina 5, in Parma 8, Saturnia 8, Graviscæ 5. On the other hand, in the Latin colony Vibo the foot soldier obtained 15, the cavalry 30 jugera; in Bononia the former 50, the latter 70; in Aquileia the cavalry 140, the centurions 100. This curious fact is easily explained, if we assume that *the land of the Roman colonies was free from the tenth, but that the Latins had to bear a land tax, payable not to the state, (or otherwise we should hear of censorian locations), but to their patrons.*

The Roman nobility had free play in the sending out of Latin colonies from the time of the great Latin war, throughout a whole century; and this was long enough for the iniquity against the allies and confederates to expand into crying injustice, and to begin to bear the inevitable fruits. There was found, finally, amongst the nobility a man bold, noble, and wise enough to see the evil, and to set himself against it. It was the unfortunate and much calumniated C. Flaminius. He proposed as a tribune of the people (232), for the first time, that Roman colonists should be settled on the conquered land as Roman citizens in the district of Picenum, which was taken from the Gauls. Thence alone is the opposition of the senate to be explained; a Latin colony would have been acceptable, or rather desirable, to secure Picenum. Shortly before were the Latin colonies Brundusium (244) and Spoletium (242)

founded, and soon afterwards (218) Cremona and Placentia. But the grants of land proposed by Flaminius were of a different nature. They, like those of the Gracchi, had rather for their object to provide for poor citizens than to secure conquered land, therefore no regular colony was established, no military population consisting of infantry, cavalry, and centurions was settled in a fortified city, but the land was divided *viritim*.[1] Polybius says this measure was the beginning of the decay of the Roman people. We cannot here agree with the great statesman. If the Roman state had even now struck into this path, which Flaminius indicated, it would have been its salvation; but at the time of the Gracchi the evil was incurable. But the career of Flaminius was too soon brought to a violent end; the Hannibalian war laid claim to the energies of every one; nobody had leisure to think on an agrarian law, and Flaminius had no follower. The military glory and the conquests of the republic in Macedonia and Asia covered for a long time the internal sores of the state, until again, finally, a century after the tribunate of Flaminius, they were brought to light and proved then incurable.

The condition of Italy.

Sad indeed was now the condition of Italy. The land was in the possession of a few rich families; the mass of the people beggarly poor. The tribune of the people, L. Marcius Philippus,

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[1] Cic. Cato M. 4; Brut. 14; Valer. Max. v. 4, 5; Polyb. ii. 21.

a moderate man, who proposed an agrarian law (104 B. C.), maintained that there were then not two thousand wealthy Romans in Italy.[1] The large Latifundia were most of them cultivated by slaves, the free population was poor, and declining in numbers at a fearful rate. The starving plebs of the capital was augmented yearly by the number of peasants ejected from their lands, a dangerous instrument in the hands of reckless demagogues. This mass of beggars of a single city was the sovereign of the Roman realm, and was able at pleasure to dispose of the state property. Under such circumstances the measure which the Gracchi proposed was so mild, that only the most extreme blindness and avarice could oppose it.

The agrarian laws of the Gracchi.

Tiberius Gracchus took the Licinian laws as a basis for his measures; but he extended them to all Italy; for he had to look not merely to the sustenance of the great mass of the ragged Quirites, but to the re-establishment of a re-

[1] Cicero Offic. ii. 21, 73. In Vitruvius (i. 4) there is an account which shows to us the nature of the Patronate. The inhabitants of the Apulian city Salapia requested a certain M. Hostilius to allot to them as a settlement a healthier locality. Hostilius bought a district (possessionem) on the coast, and obtained permission from the state to establish there the municipium. He sold the building ground for a sestertius each to the municipes. This M. Hostilius was probably the patron of Salapia. The inhabitants settled on the land of the state which he *purchased* by means of a fictitious purchase, which conveyed not property optimo jure privatum, but agrum privatum vectigalemque. See Lex Thoria, c. xxii. in Rudorff, and p. 119, ibid. The event must have taken place after Cicero's consulate. See Cicero in Rullum, ii. 27.

spectable peasantry in the whole territory, and to the salvation of the threatened state. Therefore, amongst Latins and the allies, as well as with Roman citizens, 500 jugera was to be the maximum possession of the state land which an individual could take into his own hands, with the addition of 250 jugera for each son. But this possession was guaranteed to the possessor and secured from the interference of future laws.[1] In respect of the surplus land, i. e. that exceeding the maximum allowed by the law, the clientage was abrogated. It was divided amongst those who were privileged to have a share, and on them, in lieu of a rate of interest to the former patrons, a tax to the state was imposed.[2]

This tax may have been legally fixed as high as the earlier one payable to the lord of the manor (i. e. five per cent. from the produce since the introduction of the fœnus semiunciarum); still the alleviation was great, since arbitrary dealings and chicanery in the exaction were the chief ground of all the evil. Added to the law was a provision, which may be considered as a bad omen for the success of the plan, and shows that then the plebs was already sunk too deep. It was forbidden to sell the newly allotted pieces of land. So much was it feared, and not without reason, that the plebs did not know how to value the boon offered.[3]

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[1] App. civ. i. 2. [2] Plutarch, C. Gracchus, 9.
[3] App. civ. i. 27.

The Gracchi saw that, even if their laws passed, the Latins and allies could derive no real advantage from them unless they were protected by the possession of the Roman franchise against the arbitrary decisions of the blind and selfish population of Rome. At the same time it must have been a natural consequence of the declaration of their right of landed property, that the owners obtained the right of the Quirites and full commercium. That Tiberius had already made this proposition is shown by a law of appeal attributed to him.[1]

C. Gracchus repeated the proposition,[2] and Fulvius Flaccus supported him.[3] The Italians, of whom our authorities here speak, are of course the Italian clients, and the mass of the people. The lords of the soil were mostly either Romans or such Italians as had obtained the right of citizenship. There were therefore in Italy, as in Rome, two parties, an aristocratic and a democratic, which stood on opposite sides in the struggle caused by the Sempronian laws.[4] The Italians who opposed the Gracchi are the former, who may have summoned great masses of their dependents. Many might have fancied the Gracchi wished to drive them from the land in order to settle Roman plebeians there. On the other hand, it is evident that the ignorant masses in Rome allowed themselves to be deceived. It

[1] Plut. Tib. Gracch. 16.
[2] App. civ. i. 23. Plutarch, C. Gracch. 6.
[3] App. civ. i. 21. [4] App. civ. i. 10.

was represented to them that they would derive little advantage from the measures of the Gracchi, as these would allow the Latins and Italians to take part in the assignment of land. This trait has been introduced by Dionysius into the narrative of Sp. Cassius. M. Livius Drusus makes his appearance, commissioned by the senate to propose the sending out of twelve colonies of Roman citizens only, who were not to be subject to a land tax, as the settlers in the colonies of Gracchus were.

The colonies intended to be established by the Gracchi were different from the old Roman colonies in their nature and their object. They were not to serve the purpose of securing conquered lands; but they were to provide allotments to the pauperised citizens: and they were not established in existing cities at the expense of the old inhabitants; but new towns were founded in uninhabited territories, or decayed towns received a new population. The colony of Junonia at Carthage is an example; and just the same took place at Neptunia and Minervium, as the newly formed names show.[1] Only Tarentum and Scylacium seem exceptions; but perhaps these cities were quite decayed.[2] It is an error to speak of the

[1] Velleius Pat. i. 15.

[2] Magna Græcia did not flourish under the Roman rule. The towns of Bruttium and Calabria, formerly so richly peopled, decayed almost perceptibly. The attempts to restore them by colonies did not succeed, as, for example, Tacitus testifies of Tarentum. Tacit. Ann. xiv. 27.

later military colonies, as they are called, of Sulla and the triumvirs as something quite new. They were certainly new as contrasted with the Gracchian colonies, but very similar to the old Roman colonies. They consisted, like them, of veterans located in inhabited parts at the expense of the old residents. The difference is only this: that in the first case the spoliation and coercion was directed against foreign enemies, and in the last case against Roman subjects and chiefly political opponents.

Subsequent agrarian laws.

After the fall of the Gracchi it was easy to the victorious party, first to bring their laws to a lock, and then to put them wholly aside. The first blow was given by the law which abrogated the prohibition of the sale of land,[1] and thus opened to the aristocracy the way to place themselves, through apparently legal means, into possession of what they had lost.

The lex Boria[2] was more injurious. It put an end to all farther assignments of land to the poor, and thus declared a right of property in the patrons to the soil of their former clients, who were thus legally reduced to tenants at will. To sweeten this bitter pill, a tax was imposed upon the now possessors, which was to be employed in relieving the poor. But this tax again was soon abrogated by the Lex Thoria:[3] and now the pro-

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[1] App. civ. i. 27. [2] App. civ. i. 17.

[3] See Das Ackergesetz des Sp. Thorius, von Dr. Rudorff; especially compare cap. viii.

cess of fermentation was got over, and a state of things was introduced which the Gracchi had sacrificed their lives to avert. There were now no longer in Italy clients in the old sense. The seignorial rights of the aristocracy were changed into those of landed proprietors. Here and there local rights may have prevailed which gave to the cultivator of the land a better title to the land he cultivated than that of a mere tenant at will. The possessors of the estates of municipal corporations, the agri Vectigales, had, for example, an hereditary right of possession as long as they paid a certain fixed rent. The right of Emphyteusis appeared here and there: but on the whole the agricultural population was hurried into a condition which under the emperors was fully developed, as that of the *coloni;* a servitude ten times harder and more dishonourable than the old clientage.

Mr. A. W. Zumpt[1] has endeavoured to derive the Coloniate from the settlement of German races in the Roman empire. I hold it to be more natural and easier to assume a gradual organic development from the interior of the Roman state. It is quite in the spirit of the strict Roman law of debt that the debtor with his family fell into servitude to the creditor. But the formation of the Coloniate was prompted by means of the regulations as to the number of free labourers required on estates, to the exclusion of slaves, which

[1] Rheinisch. Museum, 1843.

regulations have ever been repeated since Licinius.[1] What remained to the proprietors of land when their farmers could not pay, and they could not supply them by slaves, but to leave to them the appearance and name of freemen, though in fact to reduce them to a state of bondage? However, this question is worthy of a particular investigation, which we cannot now undertake.

I hasten to conclude these enquiries with a short glance at the old Roman law of debt, not with the idea of discovering anything new in this field, which, like Niebuhr, I enter upon with the hesitation and doubt of a stranger, but to obtain a confirmation of my view as to the agrarian law, from what is already established as certain.

Bearing of the old Roman law of debt on the agrarian legislation.

The old Roman law of debt we can understand only when we have a clear notion of the true nature of the Clientage. A great difficulty consists avowedly in the question, what coercive means could be brought into application against the insolvent debtor. And here two views stand one right against the other. Whilst, for instance, Niebuhr, and with him Bethmann-Hollweg, hold personal execution only to be valid, according to which the person of the debtor, and not his property, served as security to the creditor, Savigny maintains that the personal execution was always preceded by one affecting the property of the insolvent debtor.

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[1] See Suetonius Cæs. 42.

Now of these two views, neither holds true in its exclusiveness; on the contrary, a careful consideration of this subject shows that personal and real execution co-existed, but so that each of the two came into application in a determined class of debts and debtors, and they could not be arbitrarily exchanged or connected.

The personal execution, as the ruder form, was probably older, even though we cannot trace it beyond the period in which we find the real execution in force. It appears as the consequence of a personal and moral obligation attaching to a person, either on account of his status in society or as a punishment for crime. It has, therefore, the nature of a punishment. Execution on the realty is the result of obligation arising from a free contract between the two parties. Still it is easily understood, that both procedures in the effect are closely connected with one another, and may terminate in one result. The personal execution, a means of compulsion of the extremest severity, compels the debtor to liberate himself through the sacrifice of his possessions, and in the execution on the realty in the Roman law, not only the wealth which the debtor already possesses is delivered to the creditor, but also that which he may acquire in future, and with this his faculty of gain—that is, his labour, is placed at the disposal of his creditors until his full payment, a process by which the debtor falls into debt servitude.

The personal-execution is connected with the institution of the clientage. The patron has a

right to certain services of the client, of whose wealth and land he cannot, however, dispose as he pleases. He cannot appropriate it for a debt, for it belongs to the state; it is ager publicus. Hence the patron has a hold only on the person of his debtor; and here the law is particularly stringent to favour him. After a judicial decision, the Addictio, the debtor falls under the *arrest* of the *creditor*, and, if he cannot, within a certain period, clear himself by payment, the creditor is then at liberty either to sell him or even to kill him. But it is to be carefully borne in mind that this *arrest* for *debt* of the Addictus is very different from the *slavery* for *debt* of the Nexus. Unfortunately it has hitherto been overlooked that the Addictus was bound to no labour. He had still constantly the full enjoyment of his property. He could acquire property by usucapio,[1] he had property-rights to board and bed, which were given to him,[2] and according to the twelve tables he had to keep himself, which the creditor was compelled to do, only when the debtor had not the means.

The client who had not fulfilled his constitutional duties to his patron was in a certain manner a state-debtor, and was always treated with the severity which awaited those of their class. He lost his right of citizenship and his liberty; nay, his insolvency, which in relation to the state

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[1] Ulpian, L. 23, pt. D. ex quibus causis mai, iv. 6.

[2] L. 34, et de re judicata, xlii. 1.

appeared in the light of a crime, might even be punished by death. But to the annihilation of his household, of his farm, the state on public grounds could not consent. The same reasons which at the time of the conquest had determined the populus to maintain a certain number of peasants on the conquered lands, must also at a subsequent period have opposed the extermination of the peasantry. The debtor had, therefore, every facility, before the judicial Addictio, to make over his property to his heir, to turn from those belonging to him the consequences of his debt. Death he had probably seldom to fear. We know in Rome of no instance of a creditor taking the life of his debtor. He had, therefore, to fear only the debtor's prison, or being sold into foreign slavery; and this evil many a father might joyfully undergo for his family. For the creditor, on the other hand, this proceeding was less profitable. From the sale of his debtor he could only in a few cases expect a compensation for his demand. The maintenance of his creditor put him to expense; and he might therefore be well inclined, instead of personal-execution, to pursue another course.

This was the execution on the realty, a consequence of the formal contract called Nexus. It took place originally in bona fide loans; and the debtor thereby offered his whole means, present and future, and with this, his own labour and that of those belonging to him, for security to the creditor. This line of conduct appears mild, but was

most injurious to the poor and to the state itself. If it had been limited at any time to real loan transactions the evil might have been supportable; for these were comparatively rare. But the avarice of the patricians soon discovered that the Nexus was a better means of obtaining payment of the debts from their clients than the prison, which was quite profitless to themselves. Therefore there grew up, through the application of the form of the Nexus, the custom of converting client debts into loan debts. The debtor who might be threatened with death or slavery could, through the sacrifice of his property, escape the hard punishment by entering into the Nexus. As soon as this custom became general, the destruction of the peasantry was completed. Henceforth the peasants were more and more ejected from their hereditary estates, and boundless Latifundia were accumulated in the hands of the rich.

Now the meaning and importance of the lex Poetelia is intelligible, which abrogated the Nexus. There was after this law no longer any *servitude* for debt. The old debt arrest completely remained, and was extended to the securing of contracts on borrowed money.[1] But

[1] Savigny, in his treatise: "Über das alte Römische Schuldrecht," is of opinion, that even in the oldest law the Addictio with its consequences was applied in cases of debts from borrowed money. Such a conclusion, however, cannot be drawn from the twelve tables, where it is said: "Aeris confessi rebusque jure judicatis xxx dies sunto," without mentioning pecunia credita. But Savigny applies this provision of the law to the

the conversion of other debts into credit debts must here have ceased; and, principally from this, a new freedom for the poor oppressed plebeians was inaugurated.

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case of pecunia credita, because Gellius mentions it for the purpose of showing how much importance was ever attached in Rome to security in all transactions, especially in pecuniæ mutaticiæ usu atque commercio. However, as in the age of Gellius the Addictio was kept up only in cases of debts from borrowed money, it is an easy explanation, that Gellius extended the same procedure to the remotest times.

APPENDIX.

THE ROMAN KNIGHTS.

IN treating of the Roman Knights we must start from the proposition, that in the earlier period of the republic, as well as under the Kings, there was no equestrian census; so long, at least, as there were none but *equites equo publico*, that is, until the last war against Veii[1]. This follows from a passage in Polybius[2], where it is stated, that "*formerly* the enlistment of Knights for military service took place *after* that of the foot, but at a *later period* it took place *before*, since it had become customary for the Censor to select the knights according to their census"[3]. With respect to this passage, I consider Niebuhr's interpretation to be correct, in spite of its condemnation by Madvig, Zumpt, Peter, Marquardt,

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[1] Madvig (Opuscula I. p. 78) assumes that there existed in the earliest period not only an equestrian, but even a senatorial census. It was necessary, says he, that the senators should be rich, as they were neither allowed to carry on any trade, nor received salaries from the state. This we may grant to be true; but it does not prove the necessity of a senatorial census. There is no census for the English peers, although they also are required to be wealthy and independent, and are debarred, by a custom as strong as law, from engaging in commercial undertakings.

[2] Polybius VI. 20.

[3] πλουτίνδην αὐτῶν γεγενημένης ὑπὸ τοῦ τιμητοῦ τῆς ἐκλογῆς.

and Becker, who thus translate the quoted passage— "Formerly the enlistment of knights for military service took place *after* that of the foot; but, at a *later period*, it took place *before*, their selection by the Censor having previously taken place according to a property qualification."

That originally there existed no equestrian census seems to be clear also from expressions in different authors which by their vagueness show that nothing was known of a certain amount of a census for the knights. Livy relates that Servius Tullius formed twelve centuries of the knights from the chief citizens. Cicero says that they were taken from those who had the highest census. Dionysius uses a similar expression. Such terms show that there were no certain data respecting an equestrian census[1]. There is no reason why the figures for the amount of an equestrian census, if such a one had existed in the constitution of Servius Tullius, should not have been handed down to us, along with those for the five classes, preserved, with little variation, by Cicero, Livy, and Dionysius; but these historians dared not to go so far as to invent a number for which they had no authority, although they did not hesitate to suppose that, in the old time, there must have been an equestrian census, such as they were acquainted with in the period they lived in.

An additional proof for the fact that there was at first no equestrian census is afforded by the peculiarity which distinguished the centuries of the knights in the Servian constitution from those of the foot. The latter consisted of juniores and seniores, the former of juniores only. It is not easily explained why, at the first institution of the centuries, no centuriæ seniorum should

[1] The patrician Lucius Tarquitius, who, on account of his poverty, served on foot, cannot be adduced in proof of an equestrian census; he belongs to the fable of the poor hero Cincinnatus, in which a moralizing poet, or annalist, has foolishly exaggerated the poverty of the heroes of the good old time.

have been formed from the older knights, in a similar way as it was done in the five classes of foot soldiers. We must suppose that there was a radical difference between the two classes of soldiers; and this was no other but the absence, in the knights, of a property qualification, which existed in the foot. The knights not being enlisted for any property qualification, but on the ground of personal fitness, ceased to be knights as soon as they had passed the time for active service; they formed no class from which centuriæ seniorum could be made. They re-entered no doubt, after the time of their active service, those classes to which they belonged by their census. In this respect they resembled the centuries of the smiths, carpenters, and musicians, who formed no centuriæ seniorum, because they were not selected on the ground of property, but of personal qualification.

This parallel may seem inappropriate and degrading to the knights. We are accustomed to imagine that the knights formed the highest aristocracy of the state. Niebuhr goes so far as to assert that knights and patricians were identical, *i. e.* that all the patricians were contained in the six centuries of knights, called the *sex suffragia*. Those who hold such views rest their opinions partly on the analogy of Greek states such as those in which the nobility consisted of knights. Moreover, the weight of our authorities is, with regard to the Roman knights, unquestionably in favour of such opinions; but these authorities are biassed by the same opinions and analogies as those which have led modern scholars astray, viz. by the comparison of Greek institutions with those of a much later period in Rome itself. At this period to which we allude, the equestrian order in Rome consisted of a most influential and powerful class of capitalists, and the knights were the seminary of the senate; they were then, in truth, what Dionysius erroneously states of the knights of the earlier period, the "wealthiest and the most distinguished."

But the knights never formed the strength of the

Roman armies, neither at the later period of their splendour and influence, nor in the beginning. It is true there are some poetical and fabulous descriptions of battles, such, for instance, as that of the lake Regillus, where the bravery of the knights decided the victory, especially by their dismounting and fighting on foot. But such descriptions as these are clearly without the least historical foundation; and, granting that they could be relied upon, what shall we say of the merit and strength of a cavalry which must change itself into infantry to restore the fortune of the day? It is incontestible that the strength of the Roman army lay in the infantry—in the Legion—to which, properly speaking, the cavalry did not belong, as it is hardly noticed when the strength of the Legion is mentioned. As the Magister populi, or Dictator, the commander of the legion, was superior to the Magister equitum, so the infantry were superior to the cavalry. This fact admits of no doubt[1]. If any additional proof were wanted for what we have advanced, it is contained in what follows. The division into classes, ascribed to Servius, rested on a valuation of property; in proportion as property enabled a citizen to purchase the complete armour of the heavy or light armed foot soldier, it assigned to him also a more or less honourable position, and greater or less influence in the popular assemblies. The heavy armed soldiers, who had to purchase an expensive armour, who stood in the first rank, and bore the brunt of the attack, oc-

[1] Varro, L. L. V. 82, classes the equites and the accensi together, in the following passage: Magister equitum quod summa potestas hujus in equites et accensos. Niebuhr is of opinion that the Magister equitum was not, strictly speaking, the commander of the horse. But it cannot be doubted that he originally was what his title implied, although the Dictator, his superior, might assign to him any other duties he pleased. There are numerous passages in Livy, and other writers, which represent the Magister equitum as the real commander of the horse.

cupied also the first class in the political divisions of the people, had the greatest number of votes, and the privilege of voting before all others. The light armed soldiers, on the other hand, had less expense to incur in the purchase of their weapons, their position in the army was less dangerous, and in the assembly less honourable and influential. Now, with respect to the knights, it was the state who bore the expense of purchasing and maintaining their horses; no outlay was incurred by the knight directly. Is it possible to imagine any cause, why the wealthiest citizens should receive from the state an outfit of this kind, whilst the general rule was that those who had the means to provide for themselves what was required should do so? To solve this difficulty, Zumpt imagines that the knights' service was more troublesome than that of the foot soldiers, as it did not cease after a campaign, but was continued the whole year round, to ward off all hostile invasions and plundering inroads.

This explanation cannot satisfy us. The knights were all juniores, young men, rarely fathers of families; they could more easily continue in active service; and this service was not more expensive than profitable. War is supported by war; and the old Roman warfare gave ample opportunity for making booty.[1]

Madvig goes to work in a different manner.[2] He says that the knights, receiving from the state nothing but the money for the horses and their maintenance, had to purchase for themselves their armour, which could not be less expensive than that of the foot soldiers of the first class. Were this true, then indeed the knights would have been on a level with the citizens of

[1] Besides this argument, Zumpt states that the knights had to replace any horses that were killed, and that the wealthiest citizens only were capable to do this. This is an unfounded assumption, at variance with the principle upon which the grant of the *aes equestre* rested.

[2] Opuscula I. p. 84.

the first class of Servius, but they would not have had a higher rank, as is generally supposed; but Madvig's statement is unfounded. He has overlooked an important passage of Polybius,[1] where this well informed historian relates that "then (*i. e.* in the time of Polybius) the armour of the Roman knights was similar to that of the Greek, but that formerly they did not wear breastplates, but simple tunics. That on account of this light armour they were adapted indeed for quick movements, but not for close combat." This testimony seems sufficient to prove that, in the earliest period of Roman history, the knights' service was neither expensive for each knight individually, nor of very great importance to the army, and that, consequently, it could not procure political influence in the state.

The following is, therefore, an outline of the early history of the Roman equestrian order:

At the time when the Roman people, the populus Romanus, consisted of patricians only, the army was also purely patrician; the 3,000 men who made up the legion consisted of thirty centuries of juniores, the 300 knights of three centuriæ equitum. The foot formed the real strength of the army, and consisted of more or less heavily armed men, who, according to their census, had to provide themselves with more or less expensive armour. The cavalry was formed of such young men as were active, and fit for this kind of service, some no doubt sons of men still serving in the legion, others belonging to the poorer class of citizens. Their expenses were borne by the state, no census applied to them; there were, consequently, no centuriæ seniorum among them, nor were there an indefinite number of supernumeraries in the centuries of the knights, who, as was the case in those of the foot soldiers, might be enrolled in turns for active service. The state maintained only a fixed number of

[1] Polybius VI. 25.

horses, at first, three hundred. When it was intended to form two legions instead of one, nothing was necessary, in the centuries of the foot soldiers, but to take double the number of men from each century; in the case of the knights, however, it was necessary to form either entirely new centuries, or numerically to double those already existing. This was done by the addition of three hundred horses additional for each legion. It is stated that, under Tarquin the Elder, there were 1,200 knights, that is, a strength of cavalry sufficient for four legions, a statement well agreeing with the greatness of the city at that time. These 1,200 knights were divided into six centuries by Servius Tullius, so that each consisted of two hundred. Now, it is evident that, besides the knights actually enrolled and serving in the army with the *equus publicus*, it was necessary that there should be a reserve, as well for the purpose of replacing those who had fallen or were made prisoners, as also to relieve one another in successive wars; for between the seventeenth and the forty-fifth year, that is, in twenty eight years, no more than ten years of actual service could be demanded, at least at a later time of the republic,[1] and, as we may suppose, at an earlier period likewise. Such a reserve could not be formed among the young men, unless they were previously selected for it. Not everybody is fit to be a horseman; and, though a man be fit, it requires a good deal of training before cavalry can be effective in a campaign.[2] For this reason a num-

[1] This applied to all knights without distinction, whether they served *equo publico* or *privato*. (C. Becker, Handbuch der Alterth. II. A. 518.)

[2] See the account of the attempt to raise cavalry for a sudden emergency, given in Macaulay's History of England, ch. v.: "It is notorious that a horse soldier requires a longer training than a foot soldier, and that the war horse requires a longer training than his rider. Something may be done with a raw infantry which has enthusiasm and animal courage: but nothing can be more helpless than a

ber of young men, drilled for the cavalry service, freed from the obligation of serving on foot, equal or superior in number to the six centuries who served with the *equus publicus*, were kept in reserve. They were at first, perhaps, not divided into a certain number of centuries at all; and, in contradistinction to them, the knights enrolled for active duty were called the sex suffragia, the six votes, for this evident reason, because they, and they alone, had the right to vote in the comitia of centuries, which were the assemblies of the organized army. It is almost self-evident that since the organization of the comitia of centuries, *i. e.* since Servius Tullius, plebeians also were selected for the knight service. This is sufficiently proved by the fact, that, whenever knights are mentioned in the early period of the Republic, they are almost always plebeians; on the other hand, it is not possible to prove that, as Niebuhr states, the sex suffragia were purely patrician, an arrangement which, after the time of Servius Tullius, would seem to be highly improbable.

As yet there existed no equestrian order, but merely centuries of knights, which were constantly renewed by periodical enlistments. But a fundamental change was effected in the last war with Veii, when, under the direction of Camillus, the tactics of the Roman army were thoroughly reorganized. The change, as it affected the knights, is commonly represented in the following way. It is stated that those citizens who, at that time, had the equestrian census, but to whom no equus publicus had been assigned by the state, volunteered to serve on horses of their own. This statement must be rejected, as we have proved that at this period no equestrian census existed. It seems more

raw cavalry, consisting of yeomen and tradesmen mounted on cart horses and post horses; and such was the cavalry which Grey commanded. The wonder is, not that his men did not stand fire with resolution, not that they did not use their weapons with vigour, but that they were able to keep their seats."

likely that several wealthy citizens, whose property would in later times have entitled them to be ranked with the knights, made the proposal just alluded to. Their voluntary service was accepted; and thus a new class of knights was established, which consisted of wealthy members only. The equestrian census was de facto introduced; and its legal establishment could not be delayed much longer. It is probable that, simultaneously with this innovation, the heavier armour of the knights, as well as the pay, was first introduced, at least in the case of those knights who served with their own horses.

These were now the most respectable. It was, perhaps, now that they were first made to constitute twelve centuries, which we are by no means compelled to look upon as numerically of the same strength with the sex suffragia. The principle of their organization was different. As soon as a property qualification was established as a means of forming these centuries, it was of course impossible to determine how many citizens should be admitted. It is, therefore, not unlikely that the number of knights in the twelve centuries was less than that of the knights constituting the sex suffragia; for the wealthier citizens forming the eighty centuries of the first class of Servius were far less numerous than those of the thirty centuries of the last, for the same reason, namely, because the timocratic principle, upon which the classes were based, was intended to equalize the political influence of a small number of wealthy citizens with that of a much greater number of the poorer sort.

The twelve centuries of knights did not vote along with the sex suffragia, but by themselves, *before* the centuries of the first class, whilst the sex suffragia voted *after*.[1] This position of the sex suffragia, be-

[1] Livy XLIII. 16. "Claudius pleaded first; and when eight of the twelve centuries of the knights had voted against the Censor, and

tween the centuries of the first and the second classes, had been preserved from the time when the army was still purely patrician, and when there were as yet no plebeian classes by the side of the patrician class, which was afterwards called the first, but anciently was simply designated as *Classis*. When afterwards the four plebeian classes were added to the first class, the sex suffragia retained their ancient position, immediately after the first class.[1]

The armour of the sex suffragia was by degrees assimilated to that of the *Equites equo privato;* and, when the knights' service began to become more and more honourable, chiefly through these wealthy knights who served with their own horses, the same distinction was extended also to the *Equites* of the sex suffragia. The custom, however, of assigning an *equus publicus* to young men of limited means was continued down to the second Punic war, as is evident from the example of Aebutius, who was rewarded by the privilege of exemption from serving in the legion on foot, and from having an equus publicus assigned to him by the Censor.[2] The fact that Aebutius might

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many others of the first class, the nobles of the state forthwith put on mourning." Peter (Epochen, page 61) gives a far fetched explanation of this passage, which Becker (Handb. der Alterth. II. p. 249) approves of. He says that Livy intentionally omitted to mention the sex suffragia, because it was well known that the nobility wished to obtain a decision favourable to the Censor, and everybody, therefore, could know what the votes of the sex suffragia would be. That the sex suffragia voted after the first class, is evident from Cicero, Phil. II. 33, § 82. With respect to this passage I agree with Niebuhr (Röm. Gesch. III. page of note 570), as to his final result, but not as to his whole mode of reasoning; but the alteration in the text of Cicero, proposed by Peter (Epoch. p. 59.), I entirely reject. The expression of Livy (I. 43), "the knights were called first" [to vote], is inaccurate. The passages from Dionysius, quoted by Becker (Handb. der Alterth. II. p. 206), do not militate against my view.

[1] In Athens, also, the knights followed the first class.

[2] Livy XXXIX. 19.

have been compelled to serve on foot shows that his property qualification did not exclude him from that kind of service.

During the same period, it had also become customary to assign an equus publicus even to such citizens as had the equestrian census. This is evident, from the punishment inflicted on the knights who fled at the battle of Cannae.[1] Their years of service equo publico were not counted; and they were obliged to serve ten additional years with their own horses. This could be demanded of such only as had really the means to purchase horses for themselves, that is, those who had the equestrian census. It is also related, that strict inquiries were made for those who were legally compelled to serve with horses of their own. The same fact is evident, from the example of the Censors M. Livius Salinator and C. Claudius Nero,[2] and of Scipio Asiaticus,[3] who all possessed the equus publicus, and also from the mentioning of senators, as members of the centuries of knights, in the beginning of the fourth book of Cicero de Republica.

It appears therefore that, from the time when the knights' service had begun to be esteemed honourable, the aristocracy did not hesitate to claim from the state even the comparatively small assistance of the equus publicus, although it was not want of means that urged them to this. The influence of the aristocracy, exerted through the censors, was sufficiently great to secure this pecuniary advantage.

We take it for certain, of course, that the grant of the equus publicus was in reality a pecuniary advantage. This would not have been the case, if, as some have supposed, each knight on his leaving the service had to refund the money received, or to make good the loss of his equus publicus, caused by casualties of war or disease. This last mentioned view has been

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[1] Livy XXVII. 11. [2] Livy XXIX. 37. [3] Livy XXXIX. 44.

supported by Zumpt, who even goes so far as to maintain that the heirs of a deceased knight were held to refund to the state the money received by him. According to this view, the grant of the equus publicus would have cost the state nothing, except at the time of the first organization of the cavalry. If this had been the case, how was it possible that the aes equestre was raised by degrees from one thousand asses, as Zumpt supposes, to ten thousand? For it is not likely that any one should have been compelled to refund a larger sum than he had received. Moreover, what would have been the meaning of taxing the widows and orphans for the aes equestre? Lastly, it could not have become usual, as we know it did, for the knights to retain their horses, and, long after leaving the active service, to remain and vote in the centuries of knights.

It is not within the scope and compass of this treatise to speak of the later history of the equestrian order. We will only add a remark, in opposition to the views of Madvig, Zumpt, Marquardt, and Le Beau (Memoires des Inscriptions, XXVIII), that it was not in consequence of the Lex judiciaria of Gracchus, that the ordo equester was first established. It grew up by degrees, since the introduction of the equestrian census. Junius Gracchanus already mentions the ordo equester.[1] It comprised all those who had the equestrian census, whether they served with their own horses, or with those of the state. Long before the Gracchi, it had become unusual to admit to this kind of service any but the wealthier class of citizens. Since the time of the second Punic war, the general prosperity of the state, and the wealth of the trading classes, had increased so rapidly that the equestrian census, which was four times greater than

[1] Plinius [Hist. Nat. XXXIII. 6. 2]. Previously, also, to this time the ordo equester is frequently mentioned, as in Livius, IX. 38, XXI. 59, XXIV. 18, XXVI. 36, Valerius Maximus, II. 9. 7.

that of the first class, was small enough to allow a very considerable number of knights to be enlisted; and the more the service of these knights became different from that of common soldiers, and was held to be the necessary training school for young officers and commanders, the more carefully did the aristocracy of Rome exclude from it all those who did not belong to their circle. How long the aes equester and hordèarium was continued to be paid is doubtful: I am inclined to think that the Plebiscitum alluded to by Cicero (De Republica IV. init.), and passed at the time of the Gracchi, 129 B. C., put an end to this practice, which had become an abuse for the benefit of a few. The measure alluded to was, perhaps, part of the Lex judiciaria of the Gracchi, which distinctly separated the equestrian order from the order of senators, and established an *ordo judicum*, not an ordo equester,[1] by enacting that all those who, after the termination of their knights' service, entered the senate, should no longer belong to the equestrian order; and that the knights, properly speaking, but probably not before the termination of their active service, should be selected for judges.[2]

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[1] Plinius, Hist. Nat. XXXII. 8. 8. Judicum autem appellatione separare eum ordinem primi omnium instituere Gracch.

[2] It is doubtful whether those knights who did not enter the senate remained in the equestrian order or not. Mention is made of old knights (Sueton. August. 37), who were excused by Augustus from some duties. From the description of Q. Cicero (De Petit. Consul. 8), it would appear that the centuries of knights consisted of younger men only. This, however, may be true only of the great majority. Most of the Publicani, not detained in Rome by official duties, no doubt resided chiefly in the provinces.

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